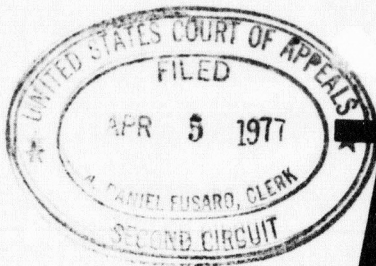


***United States Court of Appeals
for the Second Circuit***



APPENDIX



ORIGINAL

77-7082

United States Court of Appeals

For the Second Circuit.

BRITTA DANIELS as Trustee of the Testamentary
Trust under the Will of HENRY DANIELS, Deceased, and
BRITTA DANIELS, individually,
Plaintiff-Appellant,

v.

ERNST & ERNST,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK.

APPENDIX.

LIPSIG, SULLIVAN, MOLLEN & LIAPAKIS, P. C.
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p/s

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INDEX TO APPENDIX.

	Page
Docket Entries	1a
Summons	4a
Complaint	5a
Stipulation Amending Caption	11a
Amended Complaint	13a
Second Amended Complaint	20a
Answer	35a
Notice of Motion	42a
Statement Pursuant to General Rule 9(g)	44a
Affidavit of Bartlett H. McGuire in Support of Motion	53a
McGuire Exhibit A	56a
McGuire Exhibit B	57a
McGuire Exhibit C	58a
McGuire Exhibit D	59a
McGuire Exhibit E	60a
McGuire Exhibit F	61a
Affidavit of Newton Glekel in Support of Motion	62a
Glekel Exhibit A	68a
Glekel Exhibit B	70a
Glekel Exhibit C	87a
Glekel Exhibit D	88a
Glekel Exhibit E	98a
Glekel Exhibit F	99a

	Page
Glekel Exhibit G	119a
Glekel Exhibit H	132a
Deposition of Plaintiff Britta Daniels	134a
Defendants' Exhibit A for Identification	198a
Defendants' Exhibit B for Identification	213a
Defendants' Exhibit C for Identification	275a
Defendants' Exhibit D for Identification	278a
Defendants' Exhibit E for Identification	280a
Defendants' Exhibit F for Identification	282a
Affidavit of Scott E. Mollen in Opposition to Motion	307a
Exhibit A, Annexed to Affidavit of Scott E. Mollen--Affidavit of Britta Daniels in Opposition to Motion	320a
Exhibit B, Annexed to Affidavit of Scott E. Mollen--Deposition of Mrs. Britta Daniels	325a
Opinion by Frankel, D.J.	341a
Judgment	349a
Notice of Appeal	350a

1a

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT.

-----X
BRITTA DANIELS, as Trustee of the Testamentary Trust
under the Will of Henry Daniels, Deceased, and
BRITTA DANIELS, Individually,

Plaintiff-Appellant,

-against-

ERNST & ERNST,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

-----X
DOCKET ENTRIES.

DATE	NR.	PROCEEDINGS
04-15-75	1	FILED COMPLAINT. ISSUED SUMMONS.
04-24-75	2	Filed summons and return- served: Ernst & Ernst by Mr. Kingston on 04-18-75
05-07-75	3	Filed stip & order extending deft's time to answer to the complaint to 06-04-75. So ordered- FRANKEL, J.
06-05-75	4	Filed stip & order extending deft's time to answer to the complaint to 07-02-75. So ordered- FRANKEL, J.
07-07-75	5	Filed stip & order extending deft's time to answer to the complaint to 07-11-75. So ordered- FRANKEL, J.
07-09-75	6	Filed stip & order extending deft's time to answer to the complaint to 07-25-75. So ordered- FRANKEL, J.
07-29-75	7	Filed stip & order extending deft's time to answer to the complaint to 08-11-75. So ordered- FRANKEL, J.
08-18-75	8	Filed stip & order extending deft's time to answer to the amended complaint from 08-11-75 to 08-25-75. So ordered- FRANKEL, J.
08-27-75	9	Filed stip & order extending deft's time to answer to the complaint to 09-22-75. So ordered- FRANKEL, J.
09-24-75	10	Filed Stip and Order extending time of deft to answer complaint to 09-29-75. So Ordered. FRANKEL, J.

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DOCKET ENTRIES

- 9-29-75 11 Filed stip & order extending deft's time to answer to the amended complaint to 10-01-75. So ordered- FRANKEL, J.
- 9-30-75 12 Filed stip & order amending the caption as indicated and that the first cause of action of the complaint, paragraph "1" be amended as indicated. So ordered- FRANKEL, J.
- 02-75 13 Filed deft's affdvt. and notice of motion for an order pursuant to Rules 9(b) and 12 (b) (1) FRCP dismissing the amended complaint. Ret. 10-14-75.
- 02-75 14 Filed deft's memorandum in support of its motion to dismiss the amended complaint.
- 0-15-75 15 Filed stip & order adjourning deft's motion to dismiss the amended complaint from 10-14-75 to 10-31-75. So ordered- FRANKEL, J.
- 0-31-75 16 Filed stip & order that deft's motion to dismiss the amended complaint is adjourned from 10-31-75 to 11-18-75. So ordered- FRANKEL, J.
- 2-5-75 Filed Stip & Order adjourning to 12-15-75 defts motion to dismiss the amended complt on the condition that pltfss file a second amended complt.....FRANKEL, J
- 15-75 Filed pltfss second amended complt.
- 23-75 Filed Mem-End. on motion of 10-2-75. Withdrawn. So Ordered, FRANKEL, J.
- 22-75 Filed Stip & Order that deft's motion dismissing the first amended complt is withdrawn due to pltfss filing of a second amended complt. Deft must move or answer the second amended complt by 1-12-76..... FRANKEL, J
- 24-75 Filed defts notice to take deposition of Clarence Rainess & Co.
- 14-76 Filed ANSWER to second amended complt by deft.
- 8-76 PRE-TRIAL CONFERENCE HELD BY *Magistrate Hartenstein*
- 9-76 ~~PRE-TRIAL CONFERENCE HELD BY~~ *" "*
- 14-26-76 Filed defts first request for production of documents.
- 4-16-76 Filed defts notice to take deposition of pltf.
- 4-26-76 PRE-TRIAL CONFERENCE HELD BY *MAG. HARTENSTINE*
- 10-19-76 PRE-TRIAL CONFERENCE HELD BY *Magistrate Hartenstein*
- 11-30-76 PRE-TRIAL CONFERENCE HELD BY *Magistrate Hartenstein*
- 2-9-76 Filed Deft's Notice of Motion for an order granting summary judgment.
- 12-9-76 Filed Memorandum of Ernest & Ernest in support of its motion for summary judgement on statute of limitation grounds.
- 2-9-76 Filed deft's affdvt in support of its motion of summ. judg.
- 9-76 Filed deft's affdvt in support of its motion of summ. judg.

DOCKET ENTRIES

12-9-76 Filed Deposition of Britta Daniels, taken by deft. on 11-25-76.
 12-10-76 Filed defts response to plffs first request for production of documents.
 12-28-76 Filed Stip & Order adj. to 1-6-77, defts motion to dismiss the complt. FRANKEL, J.
 1-13-77 Filed defts reply memo in support of its motion for summary judgment on statute of limitation grounds.
 1-14-77 Filed plffs affdvt in opposition to defts motion for summary judgment.
 1-14-77 Filed plffs memo of law in opposition to defts motion for summary judgment.
 1-7-77 Filed Deft's deposition of Pltff Britta Daniels on 11-25-76
 1-12-77 PRE-TRIAL CONFERENCE HELD BY Magistrate *Hirsh*.
 2-1-77 Filed Memorandum #45572 & Order. Pltff brings this action claiming violations of the federal securities laws. Deft moves for summary judgment on the ground that the applicable statute of limitations has run on plffs claim. For the reasons stated defts motion is granted for summary judgment & the complt dismissed in its entirety. So Ordered, FRANKEL, J. n/m 1/27/77
 2-3-77 Filed Judgment & Order that deft have judgment against pltff, dismissing the complt in its entirety. Clerk. n/m
 2-14-77 Filed plffs notice of appeal to the USCA from the final judgment ent 2-3-77, dismissing the complt in its entirety. Copy sent to: Davis Polk & Wardwell, 1 Chase Manhattan Plaza, New York, N.Y. 10005

SUMMONS.

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. _____

BRITTA DANIELS, as Executrix of the
Estate of HENRY DANIELS, Deceased,
and BRITTA DANIELS, individually,

Plaintiff

v.

SUMMONS

ERNST & ERNST,

Defendant

To the above named Defendant :

You are hereby summoned and required to serve upon HARRY H. LIPSIG, P. C.
plaintiff's attorney , whose address is 100 Church Street, New York, New York 10007
an answer to the complaint which is herewith served upon you, within 20 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

Clerk of Court._____
Deputy Clerk.

Date: April 14th, 1975

[Seal of Court]

COMPLAINT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
BRITTA DANIELS, as Executrix of the
Estate of HENRY DANIELS, Deceased,
and BRITTA DANIELS, individually,

JURY TRIAL DEMANDED

Plaintiff,

-against-

COMPLAINT

ERNST & ERNST,

Defendant.

-----x

Plaintiff, by HARRY H. LIPSIG, P.C., upon
information and belief, alleges:

FIRST CAUSE

1. The plaintiff herein, BRITTA DANIELS, is
the widow of HENRY DANIELS, Deceased, and the Executrix of
his Estate and is the owner and successor in interest to the
stock of HENRY DANIELS, consisting of stock in Beck Industries
Pomett Manufacturing Company d/b/a Hartogs of California and
Swirts Inc., d/b/a Hartogs Inc.

2. At all times hereinafter mentioned, the
defendant, ERNST & ERNST, was and still is a partnership of
independent certified public accountants having offices
throughout various states of the United States and doing

COMPLAINT

business in the State of New York, having its principle place of business at 140 Broadway, New York, New York.

3. Jurisdiction of this Court is based upon diversity of citizenship and the amount in controversy, exclusive of interest and costs, exceeds the sum of \$10,000.00.

4. At all times hereinafter mentioned, the defendant, ERNST & ERNST, held itself out to the plaintiff's decedent, and the companies of which he was the sole stock holder, Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc., and the general public as qualified public accountants that followed generally accepted accounting principles and standards and as particularly qualified to render to the public and to individuals and corporations opinions as to the financial condition of various companies which opinions would accurately and fairly reflect the financial conditions of said companies.

5. Relative to the foregoing, the defendant, ERNST & ERNST, was retained by BECK INDUSTRIES INC., specifically during the years 1968 and 1969, and for a number of years thereafter, to conduct audits of and to examine and report on the financial condition of BECK INDUSTRIES INC. to various third parties who as it was known to the defendant, ERNST & ERNST, would rely thereon and the defendant, ERNST & ERNST, purported

COMPLAINT

to make such audits and examinations in accordance with generally accepted auditing and accounting standards, including following all procedures necessary to express such opinions about the financial condition of said company.

6. Pursuant to the foregoing undertaking and in conjunction therewith, the defendant, ERNST & ERNST, did from time to time, supply its reports on the financial condition of BECK INDUSTRIES INC. to third parties, either directly or indirectly and said defendant would from time to time, assure said third parties as to the accuracy of its reports of the financial condition of BECK INDUSTRIES INC.

7. During the years 1968 and 1969 and for a number of years thereafter, defendant, ERNST & ERNST, undertook on behalf of BECK INDUSTRIES INC., to conduct audits and to render reports on the financial condition of BECK INDUSTRIES INC., and in connection therewith, the defendant did in fact, conduct audits and render reports on the financial condition of BECK INDUSTRIES INC. Said reports were prepared by the defendant with the full knowledge that third parties would rely thereon and in fact, various reports were prepared that were provided the plaintiff's decedent for his reliance thereon.

8. In 1969 and prior thereto, the plaintiff's decedent and BECK INDUSTRIES INC., entered into negotiations for the exchange of ownership of the companies, Pomett Manufacturing Comapny d/b/a Hartogs of California and Swirts

COMPLAINT

Inc. d/b/a Hartogs Inc., which companies were then owned by the plaintiff's decedent. In this exchange, the plaintiff's decedent was to sell to BECK INDUSTRIES INC. and BECK INDUSTRIES INC. was to purchase from the plaintiff's decedent all the equity owned by the plaintiff's decedent in the foregoing companies; the ownership of which the plaintiff has succeeded to. During the course of said negotiations, various representations were made to the plaintiff's decedent and to his accountant, CLARENCE RAINS, by BECK INDUSTRIES INC. and its accountants, the defendant, ERNST & ERNST. Said representations concerned the financial condition of BECK INDUSTRIES INC. and these representations were made to the plaintiff's decedent by the defendant and by BECK INDUSTRIES INC., with the intent that the plaintiff's decedent and his agents rely thereon. These representations, when made, were false and were known to the defendant, ERNST & ERNST and BECK INDUSTRIES INC. to be false when made. Specifically, these representations reflected BECK INDUSTRIES INC. to be a corporation in a sound financial condition whereas in fact, said corporation was not and indeed, as was known to the defendant, ERNST & ERNST, was in serious financial difficulties at the time.

9. As a result of these representations made

COMPLAINT

the defendant, ERNST & ERNST, to the plaintiff's decedent and his corporations, Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc. and the accountants for the plaintiff's decedent and his corporations, the plaintiff's decedent, HENRY DANIELS and Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc. and their accountants relief thereon and the plaintiff's decedent was fraudulently induced to enter into an agreement on or about the 1st day of July, 1969 to exchange his equity ownership in Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc. to BECK INDUSTRIES INC. for BECK INDUSTRIES INC.'s stock, which included an exchange of stock of BECK INDUSTRIES INC. in the amount of \$4,200,000.00 and was to include future payment to the plaintiff's decedent's companies, Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc. and the plaintiff's decedent; said payments were to be made in succeeding years. Said fraud on the part of the defendant, ERNST & ERNST, continued over succeeding years and the plaintiff, BRITTA DANIELS, had not discovered until recently, the fact of this fraud as practiced by the defendant, ERNST & ERNST, because of the defendant having actively concealed said fraud from the plaintiff and her decedent and Pomett Manufacturing Company

COMPLAINT

d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc.

10. As a result of the foregoing, plaintiff has been damaged in the sum of \$6,000,000.00.

SECOND CAUSE

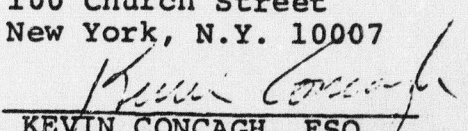
11. Defendant, ERNST & ERNST, acted herein in a fraudulent, reckless and wanton manner when actively participating in the fraudulent scheme against the plaintiff's decedent, and Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc. and the plaintiff and said conduct was done with the full knowledge of its consequences upon the plaintiff's decedent, Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc. and the plaintiff.

12. As a result of the foregoing conduct on the part of the defendant, the plaintiff is entitled to punitive damages in the sum of \$10,000,000.00.

WHEREFORE, plaintiff demands judgment against the defendant, ERNST & ERNST, in the amount of \$6,000,000.00 in the FIRST CAUSE and in the amount of \$10,000,000.00 in the SECOND CAUSE, together with interest, costs and disbursements of this action.

HARRY H. LIPSIG, P. C.
Attorney for Plaintiff
100 Church Street
New York, N.Y. 10007

BY:


KEVIN CONCAGH, ESQ.
Member of the Firm

STIPULATION AMENDING CAPTION.

PAF:el

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BRITTA DANIELS, as Executrix of the
Estate of HENRY DANIELS, deceased, and
BRITTA DANIELS, individually,

Plaintiff,

- against -

ERNST & ERNST,

Defendant.

STIPULATION

75 Civ. 1629

-----X
IT IS HEREBY STIPULATED AND AGREED, by and between the
attorneys for the parties herein, that the above entitled caption
shall be amended to the following:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BRITTA DANIELS as Trustee of
the Testamentary Trust under
the Will of HENRY DANIELS,
deceased and BRITTA DANIELS,
individually,

Plaintiff,

- against -

ERNST & ERNST,

Defendant.

-----X
and it is,

STIPULATION AMENDING CAPTION

FURTHER STIPULATED, CONSENTED AND AGREED, that the first cause of action of the Complaint, paragraph "1" be amended as follows:

The plaintiff herein, BRITTA DANIELS, is the widow of HENRY DANIELS, deceased, and the Trustee of the Testamentary Trust under the Will of HENRY DANIELS, and is the owner and successor in interest to the stock of HENRY DANIELS consisting of stock in Beck Industries, Pomett Manufacturing Co. d/b/a HARTOGS OF CALIFORNIA and SWIRTZ INC., d/b/a HARTOGS, INC. BRITTA DANIELS, resides at 3930 Hollyline Avenue, Sherman, Oaks, California, 91403, and it is

FURTHER STIPULATED, CONSENTED AND AGREED, that the county of residence of the aforementioned Trust is located in Los Angeles County, California.

Dated: New York, New York
September 24th, 1975

HARRY H. LIPSIG, P.C.
Attorney for Plaintiff
Office & P. O. Address
100 Church Street
New York, New York, 10007
732-9000

DAVIS, POLK & WARDWELL, ESQS.

BY: 

Attorneys for Defendant
Office & P. O. Address
1 Chase Manhattan Plaza
New York, New York, 10005

AMENDED COMPLAINT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x JURY TRIAL DEMANDED

BRITTA DANIELS, as Executrix of the
Estate of HENRY DANIELS, deceased,
and BRITTA DANIELS, individually,

Plaintiff,

-against-

AMENDED COMPLAINT

ERNST & ERNST,

75 Civ. 1829

Defendant.

-----x
Plaintiff, by HARRY H. LIPSIG, P.C., upon
information and belief, alleges:

FIRST CAUSE

1. The plaintiff herein, BRITTA DANIELS, is the widow of HENRY DANIELS, Deceased, and the Executrix of his Estate and is the owner and successor in interest to the stock of HENRY DANIELS, consisting of stock in Beck Industries Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc., d/b/a Hartogs Inc.

2. At all times hereinafter mentioned, the defendant, ERNST & ERNST, was and still is a partnership of independent certified public accountants having offices throughout various states of the United States and doing

AMENDED COMPLAINT

business in the State of New York, having its principle place of business at 140 Broadway, New York, New York.

3. Jurisdiction of this Court is based upon diversity of citizenship and the amount in controversy, exclusive of interest and costs, exceeds the sum of \$10,000.00.

4. At all times hereinafter mentioned, the defendant, ERNST & ERNST, held itself out to the plaintiff's decedent, and the companies of which he was the sole stock holder, Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc., and the general public as qualified public accountants that followed generally accepted accounting principles and standards and as particularly qualified to render to the public and to individuals and corporations opinions as to the financial condition of various companies which opinions would accurately and fairly reflect the financial conditions of said companies.

5. Relative to the foregoing, the defendant, ERNST & ERNST, was retained by BECK INDUSTRIES INC., specifically during the years 1968 and 1969, and for a number of years thereafter, to conduct audits of and to examine and report on the financial condition of BECK INDUSTRIES INC. to various third parties who as it was known to the defendant, ERNST & ERNST, would rely thereon and the defendant, ERNST & ERNST, purported

AMENDED COMPLAINT

to make such audits and examinations in accordance with generally accepted auditing and accounting standards, including following all procedures necessary to express such opinions about the financial condition of said company.

6. Pursuant to the foregoing undertaking and in conjunction therewith, the defendant, ERNST & ERNST, did from time to time, supply its reports on the financial condition of BECK INDUSTRIES INC. to third parties, either directly or indirectly and said defendant would from time to time, assure said third parties as to the accuracy of its reports of the financial condition of BECK INDUSTRIES INC.

7. During the years 1968 and 1969 and for a number of years thereafter, defendant, ERNST & ERNST, undertook on behalf of BECK INDUSTRIES INC., to conduct audits and to render reports on the financial condition of BECK INDUSTRIES INC., and in connection therewith, the defendant did in fact, conduct audits and render reports on the financial condition of BECK INDUSTRIES INC. Said reports were prepared by the defendant with the full knowledge that third parties would rely thereon and in fact, various reports were prepared that were provided the plaintiff's decedent for his reliance thereon.

8. In 1969 and prior thereto, the plaintiff's decedent and BECK INDUSTRIES INC., entered into negotiations for the exchange of ownership of the companies, Pomett Manufacturing Company d/b/a Hartogs of California and Swirts

AMENDED COMPLAINT

Inc. d/b/a Hartogs Inc., which companies were then owned by the plaintiff's decedent. In this exchange, the plaintiff's decedent was to sell to BECK INDUSTRIES INC. and BECK INDUSTRIES INC. was to purchase from the plaintiff's decedent all the equity owned by the plaintiff's decedent in the foregoing companies; the ownership of which the plaintiff has succeeded to. During the course of said negotiations, various representations were made to the plaintiff's decedent and to his accountant, CLARENCE RAINS, by BECK INDUSTRIES INC. and its accountants, the defendant, ERNST & ERNST. Said representations concerned the financial condition of BECK INDUSTRIES INC. and these representations were made to the plaintiff's decedent by the defendant and by BECK INDUSTRIES INC., with the intent that the plaintiff's decedent and his agents rely thereon. These representations, when made, were false and were known to the defendant, ERNST & ERNST and BECK INDUSTRIES INC. to be false when made. Specifically, these representations reflected BECK INDUSTRIES INC. to be a corporation in a sound financial condition whereas in fact, said corporation was not and indeed, as was known to the defendant, ERNST & ERNST, was in serious financial difficulties at the time.

9. As a result of these representations made

AMENDED COMPLAINT

the defendant, ERNST & ERNST, to the plaintiff's decedent and his corporations, Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc. and the accountants for the plaintiff's decedent and his corporations, the plaintiff's decedent, HENRY DANIELS and Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc., d/b/a Hartogs Inc. and their accountants relief thereon and the plaintiff's decedent was fraudulently induced to enter into an agreement on or about the 1st day of July, 1969 to exchange his equity ownership in Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc. to BECK INDUSTRIES INC. for BECK INDUSTRIES INC.'s stock, which included an exchange of stock of BECK INDUSTRIES INC. in the amount of \$4,200,000.00 and was to include future payment to the the plaintiff's decedent's companies, Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc. and the plaintiff's decedent; said payments were to be made in succeeding years. Said fraud on the part of the defendant, ERNST & ERNST, continued over succeeding years and the plaintiff, BRITTA DANIELS, had not discovered until recently, the fact of this fraud as practiced by the defendant, ERNST & ERNST, because of the defendant having actively concealed said fraud from the plaintiff and her decedent and Pomett Manufacturing Company

AMENDED COMPLAINT

d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc.

10. As a result of the foregoing, plaintiff has been damaged in the sum of \$6,000,000.00.

SECOND CAUSE

11. Defendant, ERNST & ERNST, acted herein in a fraudulent, reckless and wanton manner when actively participating in the fraudulent scheme against the plaintiff's decedent and Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc. and the plaintiff and said conduct was done with the full knowledge of its consequences upon the plaintiff's decedent, Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc. and the plaintiff.

12. As a result of the foregoing conduct on the part of the defendant, the plaintiff is entitled to punitive damages in the sum of \$10,000,000.00.

THIRD CAUSE

13. At all times herein mentioned, the defendant, ERNST & ERNST, was negligent in auditing BECK INDUSTRIES INC. and thereby aided and abetted BECK INDUSTRIES INC.'s violation of Security's Exchange Act of 1934 §10(b)5. Had the defendant, ERNST & ERNST, properly and reasonably conducted its audits of BECK INDUSTRIES INC., the fraudulent scheme of BECK INDUSTRIES INC. would have been disclosed and the failure of ERNST & ERNST

AMENDED COMPLAINT

to reasonably audit the books of BECK INDUSTRIES INC. was the proximate cause of the plaintiff's damage herein.

14. As a result of the negligent conduct on the part of the defendant, ERNST & ERNST, in auditing the books and records of BECK INDUSTRIES INC., its duty owed to the plaintiffs herein was breached and the plaintiffs herein were caused to be damaged to the extent of \$6,000,000.00.

WHEREFORE, plaintiff demands judgment against the defendant, ERNST & ERNST, on the various causes of action as follows:

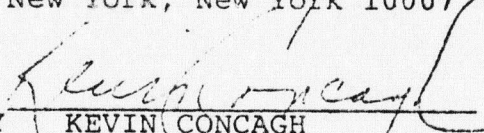
FIRST AND THIRD CAUSES: \$6,000,000.00 each

SECOND CAUSE: \$10,000,000.00

together with interest, costs and disbursements of this action.

Dated: New York, New York
June 18th, 1975

HARRY H. LIPSIG, P. C.
Attorney for Plaintiff
100 Church Street
New York, New York 10007

BY 
KEVIN CONCAGH
A Member of the firm

SECOND AMENDED COMPLAINT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x JURY TRIAL DEMANDED

BRITTA DANIELS, as Executrix of the
Estate of HENRY DANIELS, deceased,
and BRITTA DANIELS, individually,

Plaintiff,

-against-

SECOND AMENDED
COMPLAINT

ERNST & ERNST,

Defendant.

75 Civ. 1829

-----x

Plaintiff, by HARRY H. LIPSIG, P. C., upon information
and belief, alleges:

JURISDICTION

1. The plaintiff herein, BRITTA DANIELS, is the widow of HENRY DANIELS, Deceased, and the Executrix of his Estate and is the owner and successor in interest to the stock of HENRY DANIELS, consisting of stock in Beck Industries Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc., d/b/a Hartogs Inc.

2. At all times hereinafter mentioned, the defendant, ERNST & ERNST, was and still is a partnership of independent certified public accountants having offices throughout various states of the United States and doing business in the State of New York, having its principle place of business at 140 Broadway, New York, New York.

SECOND AMENDED COMPLAINT

3. The amount in controversy, exclusive of interest and costs, exceed the sum of ten thousand dollars (\$10,000.00).

4. This action arises, inter alia, under Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78j(b) and Rule 10b-5, 17 C.F.R. §240.10b-5, promulgated thereunder, and under Section 17(a) of the Securities Act of 1933, 15 U.S.C. §77q(a).

5. Jurisdiction is conferred in this Court by Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. §78aa, by Section 22 of the Securities Act of 1933, 15 U.S.C. §77v, by the provisions of 28 U.S.C. §1331 and by pendent jurisdiction.

FIRST CAUSE OF ACTION

6. At all times hereinafter mentioned, the defendant, ERNST & ERNST, held itself out to plaintiff's decedent, and the companies of which he was the sole stockholder, Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc., (collectively referred to as "the companies") and the general public as being a national public accounting firm possessing and exercising the highest standards of probity, reliability and accounting skills and as possessing at least the ordinary skill, ability and experience of public accountants in accounting matters and as being specially qualified in the examination and auditing of accounts of business concerns and the preparation of financial statements and reports based on its

SECOND AMENDED COMPLAINT

examinations and audits. Ernst & Ernst held itself out to plaintiff's decedent, and the companies and the public as a firm of independent certified accountants which was professionally qualified to perform examinations and audits of the books, records and accounts of business concerns in accordance with generally accepted auditing standards and which was qualified to express opinions as to whether financial statements and reports fairly reflected the financial condition of business concerns, including publicly owned corporations. Ernst & Ernst held itself out to the public and to the Securities and Exchange Commission as being familiar with generally accepted auditing standards and accounting principles and with the accounting practices and procedures of the Securities and Exchange Commission. As a firm of accountants regularly rendering services to publicly owned corporations, Ernst & Ernst knew that financial statements and reports prepared by it on the basis of its audits and examinations would be filed with the Securities and Exchange Commission and would be distributed to and relied upon by holders and potential holders of securities of such corporations as fully and accurately informing such persons of the financial condition of the corporations for which Ernst & Ernst provided accounting services.

7. Relative to the foregoing, the defendant, Ernst & Ernst, was retained for valuable consideration by BECK INDUSTRIES INC., specifically during the years 1968 and 1969, and for a number of years thereafter, to conduct audits of and to examine and report on the financial condition of BECK INDUSTRIES INC. and

SECOND AMENDED COMPLAINT

its consolidated subsidiaries to various third parties who as it was known to the defendant, ERNST & ERNST, would rely thereon and the defendant, ERNST & ERNST, purported to make such audits and examinations in accordance with generally accepted auditing and accounting standards, including performing all procedures necessary to express such opinions about the financial condition of said company.

8. Pursuant to the foregoing undertaking and in conjunction therewith, the defendant, ERNST & ERNST, did from time to time, supply its reports on the financial condition of BECK INDUSTRIES INC. to third parties, either directly or indirectly and said defendant would from time to time, assure said third parties as to the accuracy of its reports of the financial condition of BECK INDUSTRIES INC.

9. During the years 1968 and 1969 and for a number of years thereafter, defendant, ERNST & ERNST, undertook on behalf of BECK INDUSTRIES INC., to conduct audits and to render reports on the financial condition of BECK INDUSTRIES INC., and in connection therewith, the defendant did in fact, conduct audits and render reports on the financial condition of BECK INDUSTRIES INC. Said reports were prepared by the defendant with the full knowledge that third parties would rely thereon and in fact, various reports were prepared that were provided the plaintiff's decedent for his reliance thereon.

SECOND AMENDED COMPLAINT

10. In 1969 and prior thereto, the plaintiff's decedent and BECK INDUSTRIES INC., entered into negotiations for the exchange of ownership of the companies, Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc., which companies were then owned by the plaintiff's decedent. In this exchange, the plaintiff's decedent was to sell to BECK INDUSTRIES INC. and BECK INDUSTRIES INC. was to purchase from the plaintiff's decedent all the equity owned by the plaintiff's decedent in the foregoing companies; the ownership of which the plaintiff has succeeded to. During the course of said negotiations, various representations were made to the plaintiff's decedent and to his accountant, CLARENCE RAINS, by BECK INDUSTRIES INC. and its accountants, the defendant, ERNST & ERNST. Said representations concerned the financial condition of BECK INDUSTRIES INC. and these representations were made to the plaintiff's decedent by the defendant and by BECK INDUSTRIES INC., with the intent that the plaintiff's decedent and his agents rely thereon. These representations, when made, were false and were known to the defendant, ERNST & ERNST and BECK INDUSTRIES INC. to be false when made. Specifically, these representations reflected BECK INDUSTRIES INC. to be a corporation in a sound financial condition whereas in fact, said corporation was not and indeed, as was known to the defendant, ERNST & ERNST, was in serious financial difficulties at the time.

11. Defendant Ernst & Ernst performed the services for which they were retained in a reckless, careless, unskilled and

SECOND AMENDED COMPLAINT

grossly negligent manner, failed to audit, test and verify adequately the books and records of Beck Industries Inc., failed to adequately examine the financial statements of Beck Industries Inc., failed to adequately inform themselves for the purposes of preparing their opinion as to the company's financial statements, failed to adequately learn of the true financial condition and operations of the company, failed to prepare or cause to be prepared proper and accurate financial statements, rendered an unqualified opinion as to such matters although it knew and should have known that Beck Industries Inc.'s internal accounting control systems were inadequate to provide sufficient and appropriate data necessary for the fair presentation of the financial condition and results of operations and otherwise negligently performed the services undertaken.

12. Ernst & Ernst aided, abetted, actively participated in, and acting in concert with Beck Industries, Inc. a fraudulent course of conduct and Ernst & Ernst itself in connection with the purchase and sale of Beck Industries Inc.'s securities and in order to obtain money did engage in acts, practices and a course of business which operated as a fraud and deceit upon plaintiff, did employ devices, schemes and artifices to defraud, did make untrue statements of material fact and did omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. This conduct by Ernst & Ernst included, but was not limited to,

SECOND AMENDED COMPLAINT

the preparation, issuance and certification of financial statements, accountant's opinions and Compliance Certificates, which were false and misleading as hereinafter set forth.

13. Ernst & Ernst certified annual year-end financial statements of Beck Industries, Inc. for the years 1968 through 1969, issuing accountant's opinions in each instance which stated that Ernst & Ernst's examination had been made in accordance with generally accepted auditing standards and that the financial statements fairly presented the financial position of Beck Industries, Inc. as of December 31 of the year reported on and the results of Beck Industries, Inc. operations for the year then ended in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

14. Upon information and belief, the aforesaid financial statements certified by Ernst & Ernst did not present fairly the financial position of Beck Industries, Inc. or the results of its operations, as at the dates or for the periods under audit, in conformity with generally accepted accounting principles. The said financial statements were false and misleading, contained untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in that, among other things, said financial statements:

- (a) in each instance materially overstated the

SECOND AMENDED COMPLAINT

value of Beck Industries, Inc.'s inventory;

(b) in each instance falsely represented that the inventory had been valued at the lower of cost or market;

(c) in each instance included in Beck Industries, Inc.'s inventory and reflected as assets large quantities of obsolete and otherwise valueless items for which there was no market and which should have been written off altogether;

(d) in each instance materially overstated Beck Industries, Inc.'s earnings (or understated Beck Industries, Inc.'s losses) by, among other things, understating cost of goods sold by reason of the overvaluation of Beck Industries, Inc.'s inventory.

15. Upon information and belief, at the time it certified the aforesaid financial statements, Ernst & Ernst was fully aware of the overstatements of Beck's Industries Inc.'s assets and income set forth in paragraph 14 hereof.

16. In connection with the 1968 audit of Beck, defendant Ernst & Ernst improperly performed the services referred to hereinbefore in that, amongst other things, it failed and refused to find that approximately \$500,000 of the reported profits before taxes of one of its newly acquired subsidiaries, Sportwelt Shoe Co., Inc. was attributable to the realization of income of unreported inventory. Said profit was material and instead of Beck reporting income after extraordinary item of \$1.27 per share after taxes. This would have been but a 15% increase from the prior year,

SECOND AMENDED COMPLAINT

instead of a 25% increase and would have materially affected (1) the price of the Beck common shares and (2) the price earnings ratio accorded to the Beck common shares on the stock market, each of which would have deferred its ability to initiate and consummate the subsequent twenty-seven acquisitions which led to Beck's financial demise.

17. In connection with the 1969 audit of Beck, defendant Ernst & Ernst negligently performed the services referred to hereinbefore in that, among other things:

(a) It failed or refused to ascertain and reveal the precarious financial condition of Beck as set forth in this complaint;

(b) It failed or refused to ascertain and reveal that it was acquiring too many businesses in too short a time thereby disenabling itself from properly and adequately managing Beck and the companies it was acquiring;

(c) It improperly failed or refused to consider markdowns of certain inventory of \$1,489,000 (at cost) taken by certain retail divisions of Beck in January and February, 1970 in determining the valuation of Beck's inventory as at December 31, 1969, primarily Beck Shoe division of approximately \$750,000 and the Baker Shoe division of approximately \$500,000;

(d) It improperly permitted the inclusion of \$500,000 of life insurance proceeds received by Beck's subsidiary, Neptune, as extraordinary income in 1969 when it should have

SECOND AMENDED COMPLAINT

treated said \$500,000 as a reduction of the cost of Beck's investment in Neptune;

(e) It improperly permitted the exclusion of some \$349,000 of invoices for merchandise and expenses of Disco Fair from the financial statements of Beck for the year ended December 31, 1969;

(f) It improperly permitted the failure or refusal to write off some \$233,000 of accounts receivable and other items in the financial statements for the year ending December 31, 1969; and

(g) In the 1969 financial statements of Beck, defendant Ernst & Ernst agreed to the capitalization as deferred pre-opening expenses of at least \$403,000 of inventory shortages thereby improperly excluding such amount from cost of sales.

18.(a) The 1968 and 1969 Beck Industries, Inc. financial reports, statements, predictions and estimates were materially false and misleading in the following ways, as defendants who participated therein knew or should have known: Assets were materially overstated; liabilities were materially understated; there were no provisions for reserves or contingencies or such reserves were materially inadequate; net worth was materially overstated; revenues were materially overstated; net profits were materially overstated and net losses were materially understated; retained earnings were materially overstated; and the business and the condition of Beck Industries, Inc. and its prospects

SECOND AMENDED COMPLAINT

(both long term and near term) were materially misstated and distorted.

(b) The aforesaid financial reports, statements, predictions and estimates were materially false and misleading as the defendants who participated therein knew or should have known.

19. As a result of these false and misleading representations made by the defendant, ERNST & ERNST, to the plaintiff's decedent and his corporations, Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc. and the accountants for the plaintiff's decedent and his corporations, the plaintiff's decedent, HENRY DANIELS and Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc., d/b/a Hartogs Inc. and their accountants relied thereon and the plaintiff's decedent was fraudulently induced to enter into an agreement on or about the 1st day of July, 1969 to exchange his equity ownership in Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc. to BECK INDUSTRIES INC. for BECK INDUSTRIES INC.'s stock, which included an exchange of stock of BECK INDUSTRIES INC. in the amount of \$4,200,000.00 and was to include future payment to the plaintiff's decedent's companies, Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc. and the plaintiff's decedent; said payments were to be made in succeeding years. Said fraud on the part of the defendant, ERNST & ERNST, continued over

SECOND AMENDED COMPLAINT

succeeding years and the plaintiff, BRITTA DANIELS, had not discovered until recently, the fact of this fraud as practiced by the defendant, ERNST & ERNST, because of the defendant having actively concealed said fraud from the plaintiff and her decedent and Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc.

20. The wrongful acts of ERNST & ERNST as aforesaid constituted a violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78j(b) and Rule 10b-5, 17 C.F.R. §240.10b-5, promulgated thereunder, and of Section 17(a) of the Securities Act of 1933, 15 U.S.C. §17q(a).

21. By reason of the foregoing, plaintiff has been damaged in the sum of \$6,000,000.00.

SECOND CAUSE

22. Plaintiff repeats and realleges paragraphs 1 -21 as if the same were set forth at length herein.

23. The acts of ERNST & ERNST as aforesaid constituted a fraud and deceit against plaintiff.

24. By reason of the foregoing, plaintiff has been damaged in a sum not presently capable of being precisely ascertained, but believed to the \$6,000,000.00.

SECOND AMENDED COMPLAINT

THIRD CAUSE

25. Plaintiff repeats and realleges paragraphs 1 - 24 as if the same were set forth at length herein.

26. Defendant, ERNST & ERNST, acted herein in a fraudulent, reckless and wanton manner when actively participating in the fraudulent scheme against the plaintiff's decedent and Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc. and the plaintiff and said conduct was done with the full knowledge of its consequences upon the plaintiff's decedent, Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc. and the plaintiff.

27. As a result of the foregoing conduct on the part of the defendant, the plaintiff is entitled to punitive damages in the sum of \$10,000,000.00.

FOURTH CAUSE

28. Plaintiff repeats and realleges paragraphs 1 - 27 as if the same were set forth at length herein.

29. The acts of ERNST & ERNST as aforesaid constituted negligence and under all the circumstances herein, constituted gross negligence, carelessness and recklessness toward plaintiff.

30. By reason of the foregoing, and without any

SECOND AMENDED COMPLAINT

negligence of plaintiff contributing thereto, plaintiff has been damaged in a sum not presently capable of being precisely ascertained, but believed to be \$6,000,000.00.

FIFTH CAUSE

31. Plaintiff repeats and realleges paragraphs 1 - 30 as if the same were set forth at length herein.

32. The acts of ERNST & ERNST as aforesaid constituted material breaches of the agreements of retainer between ERNST & ERNST and BECK INDUSTRIES INC described in paragraph 7 of this complaint. It was specifically intended and contemplated by ERNST & ERNST and BECK INDUSTRIES INC. that plaintiff be a beneficiary of such agreements. All conditions precedent to ERNST & ERNST's obligations under such agreements have been performed except as ERNST & ERNST has waived or is estopped to claim non-performance of such conditions.

33. By reason of the foregoing, plaintiff has been damaged in a sum not presently capable of being precisely ascertained, but believed to be \$6,000,000.00.

WHEREFORE, plaintiff demands judgment against the defendant, ERNST & ERNST, on the various causes of action as follows:

FIRST, SECOND, FOURTH AND FIFTH CAUSES: \$6,000,000.00

THIRD CAUSE: \$10,000,000.00

34a

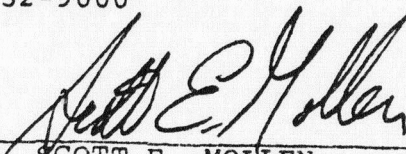
SECOND AMENDED COMPLAINT

together with interest, costs and disbursements of this action.

Dated: New York, New York
December 15, 1975

HARRY H. LIPSIG, P.C.
Attorney for Plaintiff
Office and P. O. Address
100 Church Street
New York, New York 10007
(212) 732-9000

By


SCOTT E. MOLLEN

ANSWER.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x	
BRITTA DANIELS, as Trustee of the	:
Testamentary Trust under the Will	:
of HENRY DANIELS, deceased and	:
BRITTA DANIELS, individually,	:
	75 Civ. 1829
Plaintiff,	(MEF)
	:
-against-	:
	:
ERNST & ERNST,	:
	ANSWER
Defendant.	:
	:
----- x	

Defendant Ernst & Ernst by its attorneys, Davis
Polk & Wardwell, answering the Second Amended Complaint:

AS TO JURISDICTION

1. Denies knowledge or information sufficient
to form a belief as to the truth of the allegations con-
tained in paragraph 1.

2. Denies paragraph 2, except admits that Ernst
& Ernst was and is a partnership of independent accountants
having offices in various states of the United States,
including at 140 Broadway, New York, New York.

3. Denies knowledge or information sufficient
to form a belief as to the truth of the allegations con-
tained in paragraph 3.

ANSWER

4. Denies paragraph 4, except admits that plaintiff purports to bring this action pursuant to Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder and Section 17(a) of the Securities Act of 1933.

5. Denies paragraph 5, except admits that plaintiff purports to base jurisdiction of this Court on Section 27 of the Securities Exchange Act of 1934, Section 22 of the Securities Act of 1933, the provisions of 28 U.S.C. § 1331 and on pendent jurisdiction.

AS TO THE FIRST CAUSE OF ACTION

6. Denies paragraph 6, except admits that it held itself out to Beck and to the general public as possessing the normal ability and experience of certified public accountants in accounting and auditing matters, and as being specially qualified in the auditing of business concerns and the examination of financial statements. Defendant Ernst & Ernst further admits that it held itself out to be professionally qualified to perform examinations in accordance with generally accepted auditing standards, to express professional opinions with respect to financial statements as fairly reflecting the financial condition and results of operations of business concerns, and as being

ANSWER

familiar with the published rules and regulations of the Securities and Exchange Commission with respect to the preparation of financial statements. Furthermore, defendant Ernst & Ernst knew that some financial statements and reports audited or examined by it would be filed with the Securities and Exchange Commission and might be distributed to holders and potential holders of securities of Beck Industries Inc. ("Beck").

7. Denies paragraph 7, except admits that it agreed with Beck, for valuable consideration, to conduct audits and to examine and report upon financial statements of Beck for the fiscal years 1968 and 1969 with certain exceptions noted in its Reports upon those consolidated financial statements, said Reports to be submitted to the Board of Directors of Beck.

8. Denies paragraph 8.

9. Denies paragraph 9, except admits that it conducted audits and examined and reported upon Beck's consolidated financial statements for the fiscal years 1968 and 1969 with certain exceptions noted in its Reports thereon, and admits that it knew that such Reports would be included in Beck's 1968 and 1969 Annual Reports and certain other documents.

ANSWER

10. Denies paragraph 10, except denies knowledge or information sufficient to form a belief as to the negotiations that occurred between representatives of Beck and plaintiff's decedent for the exchange of ownership of the companies, Pomett Manufacturing Company d/b/a Hartogs of California and Swirts Inc. d/b/a Hartogs Inc. (the "Companies").

11. Denies paragraph 11.

12. Denies paragraph 12.

13. Denies paragraph 13, except admits that Ernst & Ernst examined and reported upon the consolidated financial statements of Beck for the fiscal years 1968 and 1969 with certain exceptions noted in its Reports which it issued on such financial statements and respectfully refers the Court to the contents thereof.

14. Denies paragraph 14.

15. Denies paragraph 15.

16. Denies paragraph 16, except denies knowledge or information sufficient to form a belief as to the truth of the last sentence of paragraph 16.

17. Denies paragraph 17.

18. Denies paragraph 18.

ANSWER

19. Denies paragraph 19, except admits that plaintiff's decedent exchanged his equity ownership in the Companies for Beck stock in accordance with the terms of the agreement signed in July, 1969.

20. Denies paragraph 20.

21. Denies paragraph 21.

AS TO SECOND CAUSE

22. Repeats its answers to the allegations contained in paragraphs 1 - 21.

23. Denies paragraph 23.

24. Denies paragraph 24.

AS TO THIRD CAUSE

25. Repeats its answers to the allegations contained in paragraphs 1 - 24.

26. Denies paragraph 26.

27. Denies paragraph 27.

AS TO FOURTH CAUSE

28. Repeats its answers to the allegations contained in paragraphs 1 - 27.

29. Denies paragraph 29.

30. Denies paragraph 30.

ANSWER

AS TO FIFTH CAUSE

31. Repeats its answers to the allegations contained in paragraphs 1 - 30.

32. Denies paragraph 32.

33. Denies paragraph 33.

FIRST AFFIRMATIVE DEFENSE

34. This action is barred by the applicable statute of limitations.

SECOND AFFIRMATIVE DEFENSE

35. Defendant Ernst & Ernst is not now aware of all the facts known to plaintiff at or after the time of the conduct alleged in the Second Amended Complaint. Therefore, defendant Ernst & Ernst does not know the facts sufficiently to plead in any greater detail the defenses of estoppel, waiver, laches, unclean hands or any other such defenses based upon the knowledge or information of plaintiff. Ernst & Ernst therefore simply asserts such defenses and if discovery should disclose the existence of facts regarding such defenses, Ernst & Ernst will seek leave of court to amend this answer, if necessary, in order to plead the same in more detail.

41a

ANSWER

THIRD AFFIRMATIVE DEFENSE

36. The Second Amended Complaint fails to state a claim upon which relief can be granted against defendant Ernst & Ernst.

WHEREFORE, defendant Ernst & Ernst demands judgment dismissing the Second Amended Complaint, and granting to Ernst & Ernst the costs and disbursements of this action, together with such further relief as may be just and proper.

Dated: New York, New York

January 12, 1976

Yours etc.
DAVIS POLK & WARDWELL

By *Justin H. M'bin*
A Member of the Firm

Attorneys for Defendant
Ernst & Ernst
1 Chase Manhattan Plaza
New York, New York 10005
422-3400

To: HARRY LIPSIG, P.C.
100 Church Street
New York, New York 10007
732-9000

NOTICE OF MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

BRITTA DANIELS, as Trustee of the :
Testamentary Trust under the Will :
of HENRY DANIELS, deceased and :
BRITTA DANIELS individually, : NOTICE OF MOTION

Plaintiff, :

-against- :

ERNST & ERNST, :

Defendant. :

- - - - - x

PLEASE TAKE NOTICE that upon this Notice of Motion, Ernst & Ernst's Memorandum in support thereof, the affidavits of Newton Glekel and Bartlett H. McGuire and the exhibits annexed thereto, the deposition of Britta Daniels and the exhibits thereto, and upon the pleadings and files in this action, defendant Ernst & Ernst will move this Court, Honorable Marvin E. Frankel, in Room 2002, on December 23, 1976 at 10:00 A.M., or as soon thereafter as counsel can be heard, for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting summary judgment

NOTICE OF MOTION

in favor of defendant Ernst & Ernst on the ground that the statute of limitations has run on plaintiff's claims, and for such other and further relief as may be just and proper.

Dated: New York, New York
December 9, 1976

Yours, etc.

DAVIS POLK & WARDWELL

By Barton H. M. Givins
A Member of the Firm

Attorneys for Defendant
Ernst & Ernst
1 Chase Manhattan Plaza
New York, New York 10005
Telephone: 212-422-3400

TO: LIPSIG, NAPOLI, SULLIVAN,
MOLLEN & LIAPAKIS
Attorneys for Plaintiff
100 Church Street
New York, New York 10007

STATEMENT PURSUANT TO GENERAL RULE 9(g).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x	
BRITTA DANIELS, as Trustee of the	:
Testamentary Trust under the Will	:
of HENRY DANIELS, deceased and	:
BRITTA DANIELS individually,	:
Plaintiff,	: 75 Civ. 1829 (MEF)
	: STATEMENT PURSUANT
	: <u>TO GENERAL RULE 9(g)</u>
-against-	:
ERNST & ERNST,	:
Defendant.	:
----- x	

Pursuant to Rule 9(g) of the General Rules of this Court, defendant Ernst & Ernst states the following material facts as to which it contends that there is no genuine issue to be tried:

The Parties

1. Mrs. Britta Daniels is the widow of Henry Daniels. From 1966 to September 1973, when Mr. Daniels died, Mr. and Mrs. Daniels were residents of California. Mrs. Daniels has continued to live in California since that time (Daniels Dep. at 3, 5, 15). Mr. Daniels' testamentary trust, which Mrs. Daniels represents as trustee, is also located in California (Daniels Dep. at 11; Stipulation September 24, 1975).

STATEMENT PURSUANT TO GENERAL RULE 9(g)

2. Ernst & Ernst is a partnership of independent accountants having offices in various states of the United States (Complaint ¶2; Answer ¶2). Ernst & Ernst conducted audits and examined and reported upon Beck's consolidated financial statements for the fiscal years 1968 and 1969 with certain exceptions noted in its reports thereon (Complaint ¶9; Answer ¶9).

The Sale of Hartogs to Beck and
Events Prior to the Closing

3. In 1969, Henry Daniels was the president and sole shareholder of Hartogs (Daniels Dep. at 6-7). Hartogs, made up of two California corporations located in downtown Los Angeles, was in the business of designing, manufacturing and selling shirts to retailers (id. at 6-9 and Exhibit B thereto at 1).

4. Negotiations between Hartogs and Beck began prior to Christmas 1968, at which time Mr. Daniels received a number of Beck annual reports (Daniels Dep. at 24, 29-30). Mr. Daniels met on a number of occasions with Beck representatives, including Charles McDevitt, president of Beck, and Robert Fine (id. at 22-23). James Brown, the long-time lawyer for Mr. Daniels as well as Hartogs, participated in the negotiations on Mr. Daniels' behalf (id. at 9-11, 20).

STATEMENT PURSUANT TO GENERAL RULE 9(g)

5. According to Mrs. Daniels, McDevitt and Fine told her husband that Beck was a "great company" and that Beck was in "a very sound financial condition" (Daniels Dep. at 24-25). The Beck representatives discussed Beck's plans to acquire more companies in the future and to build up Hartogs' business (id. at 25, 28). Henry Daniels was also allegedly assured by Beck representatives that Beck stock could only go up (id. at 25-26).

6. On July 1, 1969, Beck and Mr. Daniels entered into an agreement for the sale by Mr. Daniels of all of Hartogs' stock to Beck in exchange for Beck common stock valued as of the closing at \$4.2 million (Daniels Dep. Exhibit B at 15; Complaint ¶19).

7. As part of the sale of Hartogs to Beck, Henry Daniels was given a 5-year employment contract by Beck (Daniels Dep. at 26 and Ex. A to Daniels Dep. Exhibit B). Mr. Daniels remained as president of Hartogs until his death in 1973 (Daniels Dep. at 15).

Events After the Closing

8. From February 1969 to July 1970, Beck stock dropped from \$42.50 to \$4.50 on the American Stock Exchange (Glekel Aff. ¶¶3, 4).

STATEMENT PURSUANT TO GENERAL RULE 9(g)

9. On or about July 10, 1970, Beck asked the American Stock Exchange for a temporary suspension in the trading of its stock, in order to protect its stockholders and prevent speculative trading after Beck learned that a hoped-for public debenture offering, to be underwritten by Weis, Voison, Cannon, Inc., was not going to proceed on schedule (Glekel Aff. ¶2). Consequently, on July 10, 1970, the American Stock Exchange suspended trading in Beck common stock (Glekel Aff. ¶3). The Exchange never reinstated trading in Beck's stock (id.).

10. Beck's announcements regarding the failure of the debenture offering and the suspension of trading were sources of comment in the public press, including the Los Angeles Times (Glekel Aff. ¶5 and Exhibit A thereto; McGuire Aff. ¶2(a)-(b) and Exhibits A and B thereto). Mrs. Daniels had subscribed to the Los Angeles Times throughout the relevant time period (Daniels Dep. at 39). According to her testimony, she was sure that Mr. Daniels read financial publications, such as Forbes, Business Week, Fortune or Dun's Review (id. at 40).

11. Mr. and Mrs. Daniels were aware that the price of Beck's stock had dropped from over \$40 in 1969 to under \$5 just before trading in Beck's stock was suspended

STATEMENT PURSUANT TO GENERAL RULE 9(g)

(Daniels Dep. at 43-44). They discussed Beck's financial condition in July 1970 after learning of the suspension in trading. Mr. Daniels advised his wife that in 1969 Beck's financial condition had been misrepresented to him (Daniels Dep. at 41-42). She understood him to mean that the alleged misrepresentations extended specifically to the financial statements (id. at 53-54). As Mr. Daniels said, "I was taken I really was taken" (id. at 42).

12. During the period from July 1970 through May 1971, Beck undertook a number of steps (described in ¶¶13-15 below) with a view toward improving its financial position. These actions were a source of comment and publicity in the public press, which frequently referred to Beck's "financial crisis" or "financially troubled" condition (Glekel Aff. ¶8 and Exhibit F thereto).

13. Beck met with its banks and debentureholders on a number of occasions to delay the maturity of its obligations and to seek additional financing (Glekel Aff. ¶9(a) and Exhibit F thereto at 1-4, 6; McGuire Aff. Exhibit A).

14. Beck attempted to improve its cash position by selling off a number of its subsidiaries including: Watkins Furniture (July 1970), Judy's (August 1970) and Disco-Fair (September 1970) (Glekel Aff. ¶9(b) and Exhibit F thereto).

STATEMENT PURSUANT TO GENERAL RULE 9(g)

15. A complete change in the top management at Beck took place, as more fully described in Mr. Glekel's affidavit (Glekel Aff. ¶9(c) and Exhibit F thereto).

16. Despite the efforts described above, the following events took place, all of which were reported in the public press (Glekel Aff. ¶10 and Exhibit G thereto):

(a) In August 1970, two of Beck's subsidiaries, H. Liebes & Co. and The Peddlers Inc., filed petitions under Chapter 11 of the Federal Bankruptcy laws;

(b) In October 1970, Beck reported (i) a net loss of \$651,000 from continuing operations before extraordinary items for the first half of the fiscal year ended August 1, compared with earnings of \$533,000 a year earlier, and (ii) an extraordinary loss of \$19.7 million for the first half of the fiscal year;

(c) In December 1970, Beck reported (i) a net loss of \$1.6 million from continuing operations before extraordinary items for the 39 weeks ended October 31, compared with earnings of \$1.4 million a year earlier, and (ii) an extraordinary loss of \$18.5 million for the 39 weeks, plus a net loss of \$5.6 million from discontinued operations.

STATEMENT PURSUANT TO GENERAL RULE 9(g)

17. On May 27, 1971, Beck filed a petition for reorganization under Chapter X of the Federal Bankruptcy Act (Glekel Aff. ¶11 and Exhibit H thereto). The Los Angeles Times, New York Times and Wall Street Journal all quoted Beck's president as stating, "After months of negotiation and intensive effort to resolve the company's serious financial difficulties, the company has concluded that the interests of its stockholders and creditors will best be served by utilizing the judicial procedures available under Chapter 10." (Glekel Aff. Exhibit H; McGuire Aff. Exhibit F).

18. After learning of Beck's Chapter X petition in May 1971, Mr. and Mrs. Daniels had a similar discussion to the one they had had in July 1970. Mr. Daniels repeated that he had been taken and that Beck's financial condition had not been as good as it had been represented to him in 1969 (Daniels Dep. at 44-46).

19. In September 1970, the former stockholders of A. K. Salz Tannery, Inc. ("Salz"), a company acquired by Beck in November 1969, sued Beck and, among others, six present and former officers of Beck. The complaint alleged in part that Beck had misrepresented its financial status by overstating its assets, understating its liabilities, concealing its losses and stating that Beck had ample

STATEMENT PURSUANT TO GENERAL RULE 9(g)

working capital (Glekel Aff. ¶6 and Exhibit B thereto). This lawsuit was reported in the public press (Glekel Aff. Exhibit C).

20. In April 1971, Harold Ross, a former member of the Beck board, brought an action against Glekel and McDevitt alleging that the defendants had willfully misrepresented and concealed large losses, deteriorating sales and financial difficulties of Beck in 1969 and 1970, and that the defendants had continuously presented incorrect information as to current operations, even when Beck had allegedly become insolvent (Glekel Aff. ¶7 and Exhibit D thereto). This lawsuit was also reported in the public press (Glekel Aff. Exhibit E).

21. The original complaint in the case at bar was filed on April 15, 1975. The original and all amended complaints herein have asserted among other things (a) that Beck and Ernst & Ernst misrepresented, during the course of the negotiations in 1969 and prior thereto, that Beck was in a sound financial condition, and (b) that Mr. Daniels

52a

STATEMENT PURSUANT TO GENERAL RULE 9(g)

was induced by these alleged misrepresentations into selling his stock.

Dated: New York, New York
December 9, 1976

DAVIS POLK & WARDWELL

By: *James H. McGuire*
A Member of the Firm

Attorneys for Defendant
Ernst & Ernst
1 Chase Manhattan Plaza
New York, New York 10005
Telephone: (212) 422-3400

AFFIDAVIT OF BARTLETT H. McGUIRE IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x		
BRITTA DANIELS, as Trustee of the	:	
Testamentary Trust under the Will	:	75 Civ. 1829
of HENRY DANIELS, deceased, and	:	(MEF)
BRITTA DANIELS individually,	:	
	:	<u>AFFIDAVIT</u>
Plaintiff,	:	
	:	
-against-	:	
	:	
ERNST & ERNST,	:	
	:	
Defendant.	:	
- - - - - x		

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

BARTLETT H. McGUIRE, being duly sworn, deposes
and says:

1. I am a member of the bar of this Court and
of the firm of Davis Polk & Wardwell, attorneys for Ernst
& Ernst in the above-captioned action. I submit this
affidavit in support of Ernst & Ernst's motion for summary
judgment on the ground that the action is barred by the
statute of limitations.

AFFIDAVIT OF BARTLETT H. MCGUIRE IN SUPPORT OF MOTION

2. The accompanying affidavit of Newton Glekel refers among other things to a number of financial developments relating to Beck Industries, Inc. ("Beck"), and to articles in the New York Times and Wall Street Journal describing those developments. These articles have been submitted insofar as they bear upon plaintiff Britta Daniels' actual or imputed knowledge of facts which would have caused a prudent person to suspect that Beck's financial condition was worse than was allegedly represented to Mrs. Daniels and her husband.

3. A review conducted under my supervision has disclosed a number of similar articles in the Los Angeles Times, copies of which are attached hereto. These articles refer to the following events, all of which are the subjects of Mrs. Daniels' testimony or Mr. Glekel's affidavit:

(a) Beck's request in July 1970 that trading in its common stock be suspended on the American Exchange, and the fact that trading was never resumed (Exhibits A and F);

(b) Beck's "financial crisis" arising out of its failure to complete

AFFIDAVIT OF BARTLETT H. MCGUIRE IN SUPPORT OF MOTION

a proposed debenture offering in July 1970 (Exhibit A);

(c) Beck's efforts to generate cash by selling off certain Beck subsidiaries (Exhibits B, C and D);

(d) The resignation of Beck's president (Exhibit C); and

(e) Beck's filing of a petition for reorganization under Chapter X of the Federal Bankruptcy Act in May 1971 (Exhibit F).

Bartlett H. McGuire

Bartlett H. McGuire

Sworn to before me this
8th day of December, 1976

Nerbert W. Brauer

NERBERT W. BRAUER
Notary Public, State of New York
No. 31-5427285
Qualified in New York County
Commission Expires March 30, 1978

McGUIRE EXHIBIT A.

LOS ANGELES TIMES
July 14, 1970
Page 9, Column 1
Business & Finance Section

CALIFORNIA

Beck Industries said that meetings with its creditors are continuing.

The New York firm said it is seeking an extension of the maturity of its debt obligations and arrangements for additional financing. Beck has requested that trading in its common stock be suspended on the American Exchange pending outcome of the negotiation. Beck disclosed the financial crisis when it failed to complete a proposed offering of \$15 million inconvertible subordinated debentures earlier in July. Beck is engaged in the retail sale of furniture and men's and women's shoes, apparel and accessories. It also operates discount department stores including 12 Disco Fair stores in Southern California. Beck owns the W & J Sloane furniture stores of Beverly Hills and Palm Springs.

MCGUIRE EXHIBIT B.

LOS ANGELES TIMES
 July 17, 1970
 Page 14, Column 4
 Business & Finance Section

Vornado Studies Buying Back Disco Fair Units From Beck

BY ALEXANDER AUERBACH
Times Staff Writer

Beck Industries Inc. of New York is negotiating to sell its 12 Disco Fair discount stores in Southern California to Vornado Inc. of Garfield, N.J., the two companies announced Thursday.

Beck announced earlier that it is unable to meet currently maturing debts and is meeting with creditors. A \$15 million debenture offering by Beck was held up when underwriters asked the company to wait until second-quarter figures are available after Aug. 1, a Beck spokesman said.

A statement on the agreement with creditors is expected today or Monday, he added.

Vornado is in effect buying back a chain it sold to Beck a year ago.

Vornado sold 10 of its Unimart discount stores to Beck in March 1969 for an undisclosed amount.

The 12 stores and two others still under the Disco Fair label are now up for sale to Vornado. The 12 stores make up the entire Disco Fair chain.

The Disco Fair stores contributed about 11% of Beck Industries' sales last year. The company, which operates retail shoe stores under the A. S. Beck and C. H. Baker names, a number of women's specialty stores including Judy's in Southern California, and furniture stores including W. & J. Sloane of Beverly Hills.

Vornado Inc., with 1969 sales of \$788 million, operates 36 Two Guys in the eastern U.S. and on the West Coast, the Food Giant supermarkets and Builders Emporium, 3 Unimart stores, and franchises 240 Foster Freeze drive-ins in California.

McGUIRE EXHIBIT C.

LOS ANGELES TIMES
 July 18, 1970
 Page 7, Column 5
 Business & Finance Section

Beck's Chief Quits as Hartfield-Zodys Bids for Takeover

BY ROBERT A. ROSENBLATT

Times Staff Writer

Charles F. McDevitt, the acquisition-minded president and chief executive officer of Beck Industries, Inc., New York, resigned Friday as major stockholders and creditors moved to take control of the ailing retailing company.

Meanwhile, Hartfield-Zodys, Inc., New York, a department store chain operating in Southern California, is negotiating for a possible acquisition of the entire Beck complex of companies. Top executives and directors of Hartfield-Zodys have been conferring with Beck management at New York's Waldorf-Astoria hotel. In another room, representatives of several firms are negotiating for the purchase of the 12 Southern California discount stores operated by Disco Fair, a Beck subsidiary.

Beck announced previously that it couldn't pay debts now coming due. The company is asking banks, debenture holders and other creditors for an extension.

Banks Urging Sale

The sale of the Disco Fair subsidiary is being pushed by the banks that are Beck's creditors, according to a highly placed source. "The banks want Beck to generate some cash immediately," the source said.

Sidney Moray, Disco Fair president, said in a telephone interview from New York Friday that he expects his company to be sold as an operating entity within two weeks, regardless of the fate of Beck, which holds 90% of Disco Fair stock.

The deposed Beck chief executive, 38-year-old McDevitt, headed the firm since June, 1968. Under his leadership, the company, formerly A. S. Beck Shoe Corp., diversified rapidly. Some 27 firms were acquired, putting Beck into discount stores, furniture, and men's and women's clothing operations. Southern California operations include Disco Fair, the Judy's shops, W&J Sloane of Beverly Hills, C. H. Baker shoe stores, and Angelus Furniture.

McDevitt also resigned as a director Friday.

Glekel Takes Over

The new chairman of the board and chief executive officer is Newton Glekel, chairman of the executive committee. Glekel joined the board in 1968 after buying 90,000 shares of the old A. S. Beck Shoe Corp.

Glekel took command Friday "at the request of common and preferred stockholders and debenture holder groups representing certain of the former owners of businesses

Continued from 7th Page

acquired by the company," Beck Industries said in a formal press release.

Glekel will be replacing the man he helped bring in to run the company. McDevitt, an Idaho attorney, worked for Boise Cascade Corp. and negotiated this company's purchase of the Disco-Wayne Corp., headed by Glekel, a New York industrialist. Glekel took his profits from the sale of Disco-Wayne, purchased Beck stock, and recruited McDevitt as president.

Joining Glekel on the new management team is Len Yarfuz, who will be executive vice president for operations. Yarfuz is now president of Mid-Atlantic Footwear, a Beck subsidiary.

Eight veteran Beck executives, representing furniture, footwear, women's wear, men's wear, and ap-

parel manufacturing, will serve on a management advisory committee.

Beck's announcement Friday said the corporation had "entered into discussions with Hartfield-Zodys Inc. with regard to possible management operations for the company." Abe I. Marks, chairman and chief executive officer of Hartfield-Zodys, which has 21 discount stores in the Los Angeles area and 11 women's specialty shops in the West, is leading the negotiations for a possible takeover of Beck, a source told the Times. Some Hartfield-Zodys directors are also at the hotel meetings.

The Beck subsidiary, Disco Fair, is being wooed by several buyers, including Vornado, Inc., Garfield, N.J. Disco Fair contributed about 11% of Beck sales last year.

BEST COPY AVAILABLE

McGUIRE EXHIBIT D.

LOS ANGELES TIMES
July 23, 1970
Page 12, Column 5
Business & Finance Section

Beck Sells Furniture Unit to Broyhill in Bid to Raise Cash

Troubled Beck Industries of New York announced Wednesday that it has sold its Watson Furniture Co. subsidiary to Broyhill Stores Inc. of North Carolina for an undisclosed amount of cash and is trying to sell two other subsidiaries.

The company is currently negotiating with Vornado Inc. of Garfield, N.J. to sell Beck's Disco Fair Stores chain in Southern California.

Beck Chairman Newton Stekel recalled that a second, unidentified subsidiary is also up for sale. No further sales are planned, he added.

Beck has been in financial difficulties since underwriters asked the company to postpone a \$15-million offering of convertible subordinated debentures. An earlier planned stock offering was abandoned because of market conditions. The company has been meeting with creditors for more than a week.

The sale of the subsidiaries is being urged by the banks that are Beck's chief creditors, according to company source, to generate immediate cash.

McGUIRE EXHIBIT E.

LOS ANGELES TIMES
May 22, 1971
Page 8
Business & Finance Section

**Beck Industries will meet next week
to consider prospects for the future.**

Beck said its board met Thursday and Friday and will meet again next week to consider what course of action to take in dealing with its serious financial problems. The company said one possibility is to file for reorganization under the Federal Bankruptcy Act. The firm said it is continuing its discussions with creditors and other parties.

61a

McGUIRE EXH BIT F.

LOS ANGELES TIMES
May 28, 1971
Page 15, Column 4
Business & Finance Section

Beck Filing for Chapter 10 Regrouping

NEW YORK (DJ)—Beck Industries Inc. said its board has directed the filing of a petition for reorganization of the company pursuant to Chapter 10 of the federal Bankruptcy Act.

None of the Beck subsidiaries are filing, it said.

Herbert Englehardt, president of Beck Industries said, "After months of negotiation and intensive effort to resolve the company's serious financial difficulties, the company has concluded that the interests of its stockholders and creditors will best be served by utilizing the judicial procedures available under Chapter 10."

He said, "I wish to emphasize that only the parent corporation — Beck Industries Inc. — is taking this step and there is no present intention to have any subsidiary commence any similar proceeding."

Beck Industries has not traded on the Amex since July 10, 1970 (last traded at 1 1/2).

AFFIDAVIT OF NEWTON GLEKEL IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

BRITTA DANIELS, as Trustee of the	:	
Testamentary Trust under the Will	:	75 Civ. 1829
of HENRY DANIELS, deceased, and	:	(MEF)
BRITTA DANIELS individually,	:	
Plaintiff,	:	<u>AFFIDAVIT</u>
-against-	:	
ERNST & ERNST,	:	
Defendant.	:	

----- x

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

NEWTON GLEKEL, being duly sworn, deposes and
says:

1. From 1968 to October, 1970 I was Chairman of the Executive Committee of the Board of Directors of Beck Industries ("Beck") and I was Chairman of the Board of Beck from July, 1970 to October, 1970.

2. On or about July 10, 1970, Beck asked the American Stock Exchange for a temporary suspension in trading of its stock in order to protect its stockholders and prevent speculative trading after learning that a hoped-for public offering of debentures, to be underwritten by Weis, Voison, Cannon, Inc. was not going to proceed on schedule.

AFFIDAVIT OF NEWTON GLEKEL IN SUPPORT OF MOTION

3. On July 10, 1970 the American Stock Exchange halted trading in Beck stock. Trading in Beck stock was never reinstated on the American Stock Exchange.

4. At the time trading was halted, Beck stock was trading at 4 1/2. It had traded as high as \$42.50 in February of 1969.

5. Beck's announcements with respect to the debenture offer and the suspension of trading in Beck stock were sources of comment in the public press, examples of which are attached as Exhibit A.

6. In September, 1970 the former stockholders of A. K. Salz Tannery, Inc., a company acquired by Beck in November, 1969, brought an action against Beck and, among others, six present and former officers of Beck. The complaint alleged in part that Beck had misrepresented its financial status in 1959 by overstating its assets, understating its liabilities, concealing losses, and stating that Beck had ample working capital. A copy of the complaint is attached as Exhibit B to this affidavit. A copy of a Wall Street Journal article reporting upon the complaint is attached as Exhibit C.

7. In April, 1971, a complaint (Exhibit D) was filed against myself and the former president of Beck by a former director and shareholder of Beck alleging that

AFFIDAVIT OF NEWTON GLEKEL IN SUPPORT OF MOTION

defendants wilfully misrepresented and concealed large losses, deteriorating sales and profits and financial difficulties of Beck in 1969 and 1970, and continuously presented incorrect information as to current operations, even when Beck had allegedly become insolvent. A copy of a Wall Street Journal article reporting upon the complaint is attached as Exhibit E.

8. During the period from July, 1970 through May, 1971 Beck undertook a number of steps with a view to improving its financial position and, ultimately, to avoiding the need for filing for protection under the Federal Bankruptcy laws. Beck's actions were a source of continuing comment and publicity in the public press, which frequently referred to Beck's "financial crisis" or "financially troubled" condition. Representative samples of the press articles are attached as Exhibit F.

9. In particular, as the attached articles indicate, Beck took the following steps:

(a) On a number of occasions between July 10, 1970 and May of 1971, Beck met with its banks and debentureholders to delay the maturity of its obligations and to seek additional financing;

AFFIDAVIT OF NEWTON GLEKEL IN SUPPORT OF MOTION

(b) Beck attempted to improve its cash position by selling a number of its subsidiaries including: Watkins Furniture (July 1970), Judy's (August 1970) and Disco-Fair (September 1970);

(c) A complete change in top management took place. Within ten days of the suspension of trading in Beck stock, Charles McDevitt resigned as president and director, and I became chairman and chief executive officer. On or about July 30, 1970, Manuel Rothberg became president, chief executive officer and a member of the Board. In September, 1970, three more members of the Board of Directors resigned, including one who also left his post as vice-president of finance, and five new members were elected to an enlarged Board. In October, 1970, I resigned as chairman and as a member of the Board of Directors. In November, Manuel Rothberg became chairman and Herbert Engelhardt became president and a member of the Board.

10. Despite the efforts described in paragraph 9 above, the following events took place, all of which were reported in the public press as evidenced by the articles attached as Exhibit G:

AFFIDAVIT OF NEWTON GLEKEL IN SUPPORT OF MOTION

(a) In August, 1970, two of Beck's subsidiaries, H. Liebes & Co. and The Peddlers Inc., filed petitions under Chapter 11 of the Federal Bankruptcy laws;

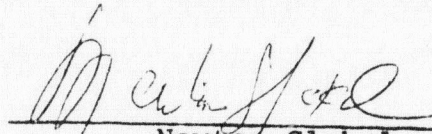
(b) In October, 1970 Beck reported (i) a net loss of \$651,000 from continuing operations before extraordinary items for the first half of the fiscal year ended August 1, compared with earnings of \$533,000 a year earlier, and (ii) an extraordinary loss of \$19.7 million for the first half of the fiscal year;

(c) In December, 1970 Beck reported (i) a net loss of \$1.6 million from continuing operations before extraordinary items for the 39 weeks ended October 31, compared with earnings of \$1.4 million a year earlier, and (ii) an extraordinary loss of \$18.5 million for the 39 weeks, plus a net loss of \$5.6 million from discontinued operations.

11. On May 27, 1971 Beck filed a petition for reorganization under Chapter X of the Federal Bankruptcy

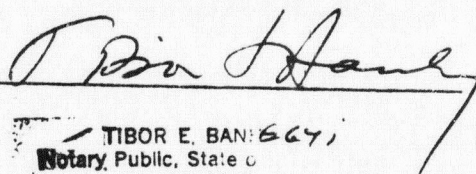
AFFIDAVIT OF NEWTON GLEKEL IN SUPPORT OF MOTION

laws. Copies of New York Times and Wall Street Journal articles reporting upon the filing are attached as Exhibit H.


Newton Glekel

Sworn to before me this

7 day of December, 1976



TIBOR E. BAN: 6641
Notary Public, State of
No. 31-46270
Qualified in New York County
Commission Expires March 30, 1978

GLEKEL EXHIBIT A.

WALL STREET JOURNAL
 July 13, 1970
 Page 2, Column 4

Beck Industries Faces Finance Crisis as Issue Of Debentures Fizzles

It Seeks to Extend Maturity of
 Current Debt and Get Further
 Loans; Trading Today Uncertain

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—Beck Industries Inc. disclosed a financial crisis triggered by its inability to complete a proposed public offering of \$15 million of convertible subordinated debentures originally scheduled to be made this month.

The diversified retailer met Friday and through the weekend with its banks and debenture holders in an effort to extend the maturity of its obligations to them and to obtain additional financing. A Beck spokesman refused to divulge the extent of the additional financing being sought.

Last night a company spokesman said negotiations were still under way. He added that Beck's business was continuing as usual.

The American Stock Exchange halted trading in Beck stock all day Friday, first pending the company's announcement and then pending receipt of requested information. The Beck spokesman said the exchange "wants to know the results of the meeting to determine whether or not trading should be resumed Monday."

Beck asked the exchange for a temporary suspension in trading of its stock "in order to protect stockholders and prevent speculative trading" after the managing underwriter for its debenture offer decided to await results for the second quarter, ending Aug. 1.

The company previously reported earnings of \$271,000 on sales of \$56.2 million for the 13 weeks ended May 2, up from net of \$247,000 on sales of \$37.8 million for the three months ended April 30, 1969, restated to include companies acquired on a poolings-of-interests basis. Before restatement for pooled companies acquired after April 30, 1969, Beck had a net loss of \$25,000 on sales of \$30.7 million for the three-month period.

Beck reported Friday that it had a net loss of \$1.5 million after credit for future tax benefits in January. Sales for the month were \$16.6 million. The \$1.5 million loss includes about \$236,000 of net losses from the company's Disco-Fair discount operation and approximately \$387,000 in net losses from the Beck Shoe Stores division.

In addition, about \$475,000 of net losses are included from companies purchased after January 1969 and not included in January 1969 results. All the operating results are subject to year-end audit.

As of Jan. 1, Beck changed its fiscal year from a calendar year to a 52-53-week year ending the Saturday nearest Jan. 31.

A spokesman for the American exchange said there would be an announcement about Beck prior to the opening of trading today.

GLEKEL EXHIBIT A

NEW YORK TIMES
July 18, 1970
Page 29, Column 5

Beck Chief Resigns**By HERBERT KOSHETZ**

Beck Industries, Inc., which last week found itself unable to complete a proposed public offering of \$15-million of convertible debentures, announced yesterday that Charles F. McDevitt has resigned as president and chief executive officer.

Mr. McDevitt, 38 years old, came to Beck in 1968 from the Boise Cascade Corporation, where he had been vice president of Boise Cascade's shelter group operations.

It was also made known that Newton Glekel, chairman of the executive committee, had agreed to become chairman of the board and chief executive officer and that Leo Yarfitz would become executive vice president of operations.

Advisory Committee Named

A management advisory committee has also been appointed. It will consist of Morton Seaman for furniture operations; Jesse Wachtel and Larry Epstein, footwear; Burt Brous and Marcia Israel, women's wear; Sam Forman, men's wear; and Dave Cohen, apparel manufacturing.

Beck operates 425 stores selling shoes, apparel, furniture and other merchandise. A spokesman for the company said that discussions had been instituted with creditors to seek some extension of time for payments and Beck had asked them to await the outcome of talks with banks and debenture holders.

Trading of Beck stock on the American Stock Exchange was suspended last Friday and the company has requested the exchange to continue the ban on trading pending the outcome of negotiations.

GLEKEL EXHIBIT B.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x

NORMAN LEZIN, MARGARET LEZIN, JENNIFER LEZIN, :
 NORMAN LEZIN as Guardian for MATTHEW and :
 JEREMY LEZIN, HELEN SALZ, BEN LEZIN, ESTELLE :
 LEZIN, JACOB VOORSANGER, JOHN AITKENS, G. C. :
 HUNT, FREDERICK LEOPOLD and WALTER A. KEANE, :
 Executors for the Estate of HANS de SCHULTHESS, :
 TANNER G. WILSON, Trustee for NANCY G., DAVID :
 L., and JOHN A. WILSON, GERALD K. HOYT, WARREN :
 L. WOLFSEN, HENRY A. WOLFSEN, STEPHEN WYCKOFF, :
 RICHARD KESSELL, DORIS KESSELL and PAUL B. :
 FLAGG, :

70 Civ.

Plaintiffs, :

COMPLAINT

- against - :

BECK INDUSTRIES, INC., SALZ LEATHERS, INC., :
 NEWTON GLEKEL, CHARLES F. McDEVITT, BERTRAM :
 H. SLATER, THEODORE SCHLISSEL, HAROLD K. :
 ROSS, MARK WILLIAMS, THE CHASE MANHATTAN :
 BANK, N.A., FRANKLIN NATIONAL BANK, BANK OF :
 AMERICA NATIONAL TRUST AND SAVINGS ASSOCIA- :
 TION, MANUFACTURERS HANOVER TRUST COMPANY, :
 CENTRAL PENN NATIONAL BANK OF PHILADELPHIA, :
 FRENCH AMERICAN BANKING CORPORATION, SEATTLE- :
 FIRST NATIONAL BANK, VIRGINIA NATIONAL BANK, :
 CENTRAL NATIONAL BANK OF CLEVELAND, AMERICAN :
 FLETCHER NATIONAL BANK AND TRUST COMPANY, :
 THE FIRST NATIONAL BANK OF CHICAGO, :

Defendants. :
 -----x

Plaintiffs, by their attorneys, for their complaint
 against defendants allege on information and belief:

GLEKEL EXHIBIT B

1. The jurisdiction of this Court is based upon 28 U.S.C. §§ 1331(a) and 1332(a) and upon Section 27 of the Securities and Exchange Act of 1934, as amended (15 U.S.C. § 78j); under Sections 12(2) and 17(a) of the Securities Act of 1933 (15 U.S.C. § 77q(a), et seq.); and under Section 10 of the Securities and Exchange Act of 1934 (15 U.S.C. § 78(a), et seq.) and Rule 10b-5 promulgated thereunder (17 C.F.R. 240 10b-5).

2. The acts, or some of them, constituting the violations of law complained of, took place within the Southern District of New York.

3. Instrumentalities of interstate commerce or of the mails were used in connection with defendants' violations of the securities laws in at least the following manner:

(a) The Agreement referred to in paragraph 10 was negotiated in part by telephone between New York and California.

(b) False and misleading financial information was mailed from New York to California.

The amount in controversy exceeds \$10,000.

4. All of the plaintiffs ("the Stockholders") are residents of the State of California except Paul B. Flagg who is a resident of the State of Wisconsin, and Walter A. Keane who is

GLEKEL EXHIBIT B

a resident of the State of New York. Norman Lezin is the duly appointed Guardian of the Estates of Jeremy and Matthew Lezin, minors. Frederick Leopold and Walter A. Keane are the duly appointed Executors of the Estate of Hans de Schulthess, deceased, and Tanner G. Wilson is the duly appointed Trustee for Nancy G., David L., and John F. Wilson.

5. Until November 3, 1969, the Stockholders owned all of the issued and outstanding stock of A. K. Salz Tannery, Inc. ("Old Salz"), a California corporation with its principal place of business in Santa Cruz, California. Old Salz was engaged in the business of tanning and selling leather.

6. The defendant Beck Industries, Inc. ("Beck"), is a Delaware corporation with its principal place of business in New York City, New York. At all relevant times until July 10, 1970 when trading was suspended, the common stock of Beck was traded on the American Stock Exchange. Beck is a conglomerate engaged in the retail sale of men's and women's shoes and apparel, of furniture, and in the operation of department stores. At the times of the transactions complained of the following persons held the following positions with Beck:

<u>Defendant</u>	<u>Position</u>
Newton Glekel	Director and Chairman of the Executive Committee of the Board of Directors

GLEKEL EXHIBIT B

Charles F. McDevitt	Director, President, and a member of the Executive Committee of the Board of Directors
Bertram H. Slater	Vice President and Secretary
Theodore Schlissel	Vice President
Harold K. Ross	Director and a member of the Executive Committee of the Board of Directors
Mark Williams	Assistant Secretary

7. Defendant Salz Leathers, Inc. ("New Salz"), a wholly-owned subsidiary of Beck, is a Delaware corporation with its principal place of business in Santa Cruz, California. New Salz was formerly known as Becksalz Co., Inc. New Salz is the successor to the business of Old Salz.

8. Defendants The Chase Manhattan Bank, N.A., Franklin National Bank, Bank of America National Trust and Savings Association, Manufacturers Hanover Trust Company, Central Penn National Bank of Philadelphia, French American Banking Corporation, Seattle-First National Bank, Virginia National Bank, Central National Bank of Cleveland, American Fletcher National Bank and Trust Company, The First National Bank of Chicago ("the bank defendants") are all banks with offices in, or who conduct business in, New York. Each of the bank defendants is a party to the collateral agreement described in paragraph 22 of the complaint which agreement was negotiated and executed in the Southern District of New York.

GLEKEL EXHIBIT B

FOR A FIRST COUNT AGAINST
BECK AND NEW SALZ

9. Negotiations between Old Salz and Beck occurred between May and November 3, 1969 concerning a possible merger of Old Salz into a wholly-owned subsidiary of Beck. During the course of these negotiations representatives of Beck, including the individual defendants, repeatedly represented to the Stockholders that Beck would earn in the range of \$1.50 to \$1.80 per share of its common stock in the calendar year 1969 as compared to \$1.27 in 1968. Also during these negotiations defendants represented to the Stockholders that Beck had adequate working capital and that additional capital could be readily obtained by the sale of Beck's securities through public offerings.

10. In reliance upon the foregoing representations and statements and the warranties described in paragraph 11 below, on November 3, 1969 a merger agreement between Old Salz and Becksalz was consummated. Beck is the owner of all of the stock of New Salz (formerly Becksalz). Pursuant to the terms of the merger agreement:

- (a) Old Salz and New Salz were merged.
- (b) The Stockholders surrendered all of their stock in Old Salz in exchange for an aggregate of 55,173 shares of the common stock of Beck and a promise

GLEKEL EXHIBIT B

to deliver an indeterminate number of shares of Beck common stock in the future based upon the future earnings of New Salz and the future market value of Beck common stock.

(c) Beck assumed the obligation and agreed to pay promissory notes of Old Salz payable to Norman Lezin and Margaret Lezin in the principal amount of \$342,000 and Helen Salz in the principal amount of \$120,000. Interest on the notes is payable monthly.

11. Among other things, the merger agreement provides:

"4. REPRESENTATIONS AND WARRANTIES OF BECK:

Beck hereby represents and warrants that:

* * *

"(d) Financial Statements. Beck has delivered to Salz copies of the following financial statements, which present fairly the consolidated financial position of Beck and its subsidiaries at December 31, 1968, and the consolidated results of their operations for the period then ended in conformity with generally accepted accounting principles:

"1. Consolidated Balance Sheet. Consolidated Balance Sheet as at December 31, 1968; and

GLEKEL EXHIBIT B

"11. Consolidated Income Statement. Consol-
dated Income Statement for the year ended December 31,
1968.

* * *

"(1) Absence of Adverse Developments. Since
December 31, 1968, there has not been, other than changes
(which are not materially adverse) in the ordinary course
of business, any significant labor trouble or any
materially adverse change in the financial condition of
Beck, its assets, liabilities, properties or business,
except as set forth in paragraphs 4(e) and 4(f) above,
including any damage or destruction of property by fire,
or other casualty not covered by insurance, or any
property taken by condemnation or eminent domain. . . .
[Emphasis added.]

* * *

"(m) Separate Existence. Until August 31,
1972, Beck shall maintain the separate corporate existence
of Subsidiary [New Salz], shall retain ownership of all
of Subsidiary's stock, shall cause Subsidiary to maintain
a fiscal year ending June 30 (or pay the incremental
audit costs incurred by reason of any change in the fiscal
year), shall cause Subsidiary to conduct the business

GLEKEL EXHIBIT B

heretofore conducted by Salz [Old Salz] and shall retain in Subsidiary all income earned subsequent to the effective date of the merger (after payment of or provision for taxes); or Beck shall make available to Subsidiary for use as working capital of Subsidiary, an amount equal to any funds distributed by Subsidiary to Beck without charge for or payment of interest thereon. [Emphasis added.]

* * *

"10. CONDITIONS TO PERFORMANCE BY SALZ: The obligation of Salz to perform under this Agreement is subject to the following conditions, the fulfillment of any of which conditions may be waived by Salz:

* * *

"(c) Representations True at Closing. The representations and warranties made by Subsidiary and by Beck shall be deemed to have been made again at and as of the time of the effective date of the statutory merger and shall then be true and correct in all material respects; provided, however, that Beck may refinance its outstanding indebtedness and in connection therewith increase the amount thereof and may issue or commit itself to issue additional shares of its Common and Second Preferred Stock. ***"

GLEKEI EXHIBIT B

* * *

"17. SURVIVAL OF REPRESENTATIONS AND WARRANTIES
INDEMNITY:

"(a) Subsidiary, Beck, Salz and Shareholder Parties agree that this Agreement and the Plan constitute the entire agreement between the parties, and their respective representations and warranties contained in paragraphs 3, 4, and 12 hereof, and in any certificates or other instruments delivered pursuant hereto and the covenants contained in various paragraphs hereof shall survive the effective date of the merger contemplated in the Plan, and any investigation made at any time.
[Emphasis added.]

* * *

Plaintiffs would not have entered into the merger agreement in the absence of the aforesaid warranties and the representations contained in paragraph 9 of this complaint.

12. In its annual report for the calendar year 1969, Beck showed earnings of \$5,597,000 or \$1.19 per share of its common stock. Beck's earnings as shown in the annual report were overstated by almost three million dollars, and this overstatement was corrected by writing off or taking a loss of -

GLEKEL EXHIBIT B

\$2,968,000 for the month of January, 1970. Beck's working capital was critically low during the last quarter of 1969. There has been no ready market for Beck's securities during that period. Beck's actual earnings for the thirteen months ending January 31, 1970 were not more than 85 cents per share of its common stock.

13. As is more fully set forth in the third count of this complaint, on or about June 5, 1970, the defendants pledged all of the issued and outstanding shares of New Salz to the bank defendants as security for an extension of the maturity date of an outstanding short-term indebtedness of Beck to August 15, 1970. The pledge agreement empowers the bank defendants in the event of default to sell the New Salz shares at public or private sale upon ten days' written notice of sale to Beck. Beck is now in default. Said pledge is in violation of paragraph 4(m) of the merger agreement as set forth in paragraph 11 of this complaint.

14. As Beck and its officers well knew or, in the exercise of reasonable care, should have known, the statements, representations and warranties described in paragraphs 9 and 11 above were false and fraudulent and omitted to state material facts necessary to make the statements made in the light of the circumstances under which they were made not misleading, in that

GLEKEL EXHIBIT B

(a) As of November 3, 1969, defendants untruthfully represented and warranted to plaintiffs in the merger agreement that there had been no materially adverse changes in Beck's financial condition, liabilities, assets, and business between December 31, 1968, and November 3, 1969, when in fact as defendants well knew such changes had occurred;

(b) The defendants misrepresented the financial status of Beck in that they overstated the assets and understated the liabilities of Beck as of November 3, 1969, and concealed from the plaintiffs financial losses occurring in Beck and materially adverse changes in Beck's financial condition occurring between December 31, 1968 and November 3, 1969;

(c) The defendants untruthfully represented to plaintiffs prior to November 3, 1969, that Beck had ample working capital and could obtain additional working capital by selling its securities through public offerings;

(d) As set forth more fully in the Third Count of this complaint, the defendants pledged all of the issued and outstanding shares of New-Salz in violation of the merger agreement.

GLEKEL EXHIBIT B

15. Since the merger, the business of New Salz has been operated by the same management staff that managed Old Salz and has been operated as a discrete entity independent of Beck, and no moneys or other assets have been paid over or delivered to Beck or received from Beck by New Salz. Plaintiffs are ready, willing and able to restore to Beck all of the Beck common shares received by them including the escrowed shares and any other things of value received by them from Beck on condition that Beck shall deliver to plaintiffs all of the issued and outstanding shares of New Salz.

16. Beck has refused plaintiffs' request for rescission of the agreement described in paragraph 10.

17. Plaintiffs have no adequate remedy at law.

FOR A SECOND COUNT AGAINST
NEWTON GLEKEL, CHARLES F.
McDEVITT, BERTRAM H. SLATER,
THEODORE SCHLISSEL, HAROLD
K. ROSS and MARK WILLIAMS

18. Repeat and reallege paragraphs 9 through 17 of this complaint.

19. The statements, representations and warranties described in paragraphs 9 and 11 of the complaint were made with the knowledge and consent of each of said defendants and none of

GLEKEL EXHIBIT B

said defendants took any steps to correct them even though they knew or had reason to know that they were false and fraudulent.

FOR A THIRD COUNT AGAINST
ALL DEFENDANTS

20. Repeat and reallege paragraphs 9 through 17 of this complaint.

21. Prior to May 1970 the various bank defendants extended credit to Beck and its subsidiaries as follows:

Credits in favor of the Company

<u>Bank</u>	<u>Credit</u>
The Chase Manhattan Bank (N.A.)	\$7,500,000
Franklin National Bank	5,900,000
Bank of America National Trust and Savings Association	2,500,000
Manufacturers Hanover Trust Company	2,000,000
Central Penn National Bank of Philadelphia	1,000,000
French American Banking Corporation	1,000,000
Seattle-First National Bank	500,000

Credits in favor of Borrowing Subsidiaries

<u>Bank</u>	<u>Borrowing Subsidiary</u>	<u>Credit</u>
Virginia National Bank	Genarco, Inc.	\$2,000,000
Central National Bank of Cleveland	Watkins Furniture Co.	2,475,000

GLEKEL EXHIBIT B

American Fletcher National Bank and Trust Company	Peoples Outfitting Co.	480,000
The First National Bank of Chicago	Beck-Joseph, Inc.	750,000

22. On or about June 5, 1970 each of these credits was due and owing to each of the bank defendants. On that date Beck, every subsidiary other than New Salz, and each of the bank defendants entered into a collateral agreement which provided as follows:

(a) The bank defendants extended the maturity date of the loans described in paragraph 21 to August 15, 1970.

(b) Beck and its subsidiaries pledged all of the stock in all of its subsidiaries, including the New Salz stock, as collateral for the extension of time.

(c) Every subsidiary of Beck other than New Salz guaranteed the loans.

(d) Beck represented to the bank defendants that it was fully capable of and under no disability to pledge the shares of its subsidiaries including those of New Salz.

GLEKEL EXHIBIT B

(e) Every subsidiary of Beck other than New Salz signed this collateral agreement.

(f) The bank defendants could sell the collateral, including the New Salz stock on ten days' notice.

23. Each of the defendants, including the bank defendants, knew or had good cause to know at the time of the execution of the collateral agreement, that Beck did not have the right to pledge the New Salz stock and that said pledge was in violation of paragraph 4(m) of the merger agreement as set forth more fully in paragraph 11 of this complaint.

24. Beck and each of its subsidiaries other than New Salz are now in default under the collateral agreement.

FOR A FOURTH COUNT AGAINST BECK

25. Repeat and reallege paragraphs 9 through 17 of this complaint.

26. Pursuant to paragraph 2 of the merger agreement Beck assumed and agreed to pay the notes described in paragraph 10(c) of this complaint including interest payable monthly. Beck has failed to make the required interest payments and by reason of said defaults in payment the entire principal and interest are due.

GLEKEL EXHIBIT B

WHEREFORE, plaintiffs demand judgment:

(1) On the first count against defendants Beck and New Salz rescinding the agreement described in paragraph 10 in its entirety, and directing the delivery to the plaintiffs of the stock of New Salz against delivery to Beck by plaintiffs of 55,173 shares of common stock of Beck together with a release of all of the right, title and interest of the plaintiffs in the shares of Beck held in escrow under the agreement referred to in paragraph 10 hereof;

(2) In the alternative, on the first count against defendant Beck awarding plaintiffs damages exceeding \$5,000,000;

(3) In the alternative, on the second count against defendants Newton Glekel, Charles F. McDevitt, Bertram H. Slater, Theodore Schlissel, Harold K. Ross and Mark Williams awarding plaintiffs damages exceeding \$5,000,000;

(4) In the alternative, on the third count against all defendants, ordering the bank defendants to deliver to plaintiffs in proper form all of the outstanding stock of New Salz;

(5) In the alternative, on the third count against all defendants awarding plaintiffs damages exceeding \$5,000,000;

GLEKEL EXHIBIT B

(6) On the third count, pending the final determination of this litigation, enjoining the bank defendants and Beck from selling, transferring, assigning or in any way disposing of or enforcing any purported rights against the stock of New Salz;

(7) On the fourth count against defendant Beck awarding damages in the amount of \$462,000 plus interest;

(8) Awarding plaintiffs' costs and disbursements including reasonable counsel fees;

(9) Awarding exemplary damages in the amount to be fixed by the court;

(10) Awarding expenses incurred by plaintiffs incident to the acquisition of Old Salz by Beck together with any federal or state income taxes incurred by plaintiffs as a result of the rescission requested hereunder.

Dated: New York, New York

September 1, 1970

PAUL, WEISS, GOLDBER, RIFKIND,
WHARTON & GARRISON
Attorneys for Plaintiffs

By /s/ Morris B. Abram
A Member of the Firm

345 Park Avenue
New York, New York 10022
(212) 935-8000

GLEKEL EXHIBIT C.

WALL STREET JOURNAL
October 14, 1970
Page 16, Column 2

Beck Industries Inc. Sued Over Merger By A.K. Salz Holders

Misrepresentation, Violation of Agreement Alleged; Rescission Or \$5 Million Damages Asked

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—The stockholders of A.K. Salz Tannery Inc., a Santa Cruz, Calif., leather concern acquired by Beck Industries Inc. last November, have filed suit in Federal court here asking that the merger be rescinded or that they be awarded damages exceeding \$5 million.

The suit charges that Beck misrepresented its financial condition at the time of the merger and violated the merger agreement by pledging Salz stock as collateral for the extension of Beck's bank debt.

Beck's president, Manuel F. Rothberg, said, "The company believes that this lawsuit is without merit," but declined comment on the suit's allegations.

Beck, a diversified shoe and retailing concern, purchased Salz for 55,173 shares of its common stock, merged the company into a subsidiary formed for the merger, Becksalz Co., and renamed the combination Salz Leathers Inc.

The suit alleges that Beck told Salz holders there had been no materially adverse change in Beck's financial condition between Dec. 31, 1968, and Nov. 3, 1969, the date of the merger, "when in fact the defendants well knew, such changes had occurred."

Beck, the suit further charges, overstated its assets and understated its liabilities, concealed financial losses and "untruthfully represented" that it had ample working capital and could obtain additional capital through public offerings.

The plaintiffs also allege that Beck pledged all of the stock of all its subsidiaries, including Salz, to obtain an extension on the maturity of its bank debt of more than \$20 million from June 5 to Aug. 15.

Beck, the suit argues, had no right to pledge Salz stock and in so doing violated a provision of the merger agreement stating that Beck "shall retain ownership of all of subsidiary's (Salz's) stock."

The suit is based on the Securities and Exchange Act of 1934 and the Securities Act of 1933.

Named as defendants are Beck, Salz Leathers Inc., six present and former officers of Beck—Newton Glekel, Charles F. McDevitt, Bertram H. Slater, Theodore Schlissel, Harold K. Ross and Mark Williams—and 11 banks involved in the extension of Beck's debt.

The suit comes at a time when Beck is trying to resolve a financial crisis triggered by its inability to complete a proposed public offering of \$15 million of convertible subordinated debentures. Trading of the company shares on the American Stock Exchange has been halted since July 10.

Defendants.

SECOND: At times mentioned in this complaint, the plaintiff was a stockholder, director and member of the Executive Committee of Beck Industries, Inc. ("Beck"), a Delaware corporation, formerly known as A. S. Beck Shoe Corporation.

GLEKEL EXHIBIT D

Beck was engaged in the manufacture and sale of shoes, handbags and related articles with headquarters in the City and State of New York and maintaining manufacturing and numerous retail establishments in various parts of the United States.

THIRD: In June 1968, Glekel acquired certain shares of stock and the right to vote additional shares of stock sufficient to secure full and complete domination and control of the affairs of Beck. Glekel, at that time, caused the appointment of McDevitt as President and Chief Executive Officer of Beck, and caused the election of persons (including Glekel and McDevitt) constituting a majority of the Board of Directors designated by Glekel, and caused the election of an Executive Committee of the Board of Directors a majority of which at all times consisted of persons designated by him and including Glekel and McDevitt; and until July 1970, Glekel continued to designate such majority of the Board of Directors and Executive Committee.

FOURTH: Beginning with June 1968 and until July 1970, Glekel with the assistance of McDevitt fully and completely controlled, dominated and directed the affairs of the corporation and including, among others, all matters relating to acquisitions and mergers, issuance of shares, financial

GLEKEL EXHIBIT D

requirements, employment of officers and executives, financial statements and reports, the direction of all business policies and Glekel dominated the actions of the Board of Directors, of the Executive Committee and of the officers of Beck. McDavitt, at the time of his election as President, was entirely without any experience whatever in the shoe business or in any mercantile or retail store operations having previously been associated with Glekel as counsel to a diversified lumber and manufacturing company headquartered in the state of Idaho.

FIFTH: The plaintiff was a director and member of the Executive Committee of Beck until July 1970. Commencing with the time when Glekel assumed full control of the affairs of Beck and continuing through July 1970, Glekel and McDavitt both acting in concert and for the purpose of misleading the plaintiff as a director, member of the Executive Committee and a stockholder of Beck:

(a) on information and belief, made private and public statements wilfully misrepresenting to and concealing from the plaintiff and others large losses, deteriorating sales and profits and financial difficulties of Beck over a period of many months including the following:

BEST COPY AVAILABLE

GLEKEL EXHIBIT D

(1) commencing with the fall of 1969 and continuing throughout the first half of 1970, the defendants concealed from and misrepresented to the plaintiff and others the large losses incurred in the operations of the Disco Fair Division and the Shoe Division of Beck; and concealed and misrepresented the extent that Beck was in arrears in its trade debt; and continuously presented incorrect information as to current operations to support wholly unfounded optimistic statements of future profits;

(11) on information and belief, the defendants caused to be presented a resolution at a meeting of the Board of Directors held on April 9, 1970 to modify the fiscal year of the corporation from a calendar year to a January 31st year commencing with the year ending January 31, 1970. Nevertheless, on April 14, 1970, the defendants issued a release setting forth the sales of Beck for the 1969 year, making no reference to any change of the fiscal year and stating that "sales are expected to approximate the \$250 million level for existing operations and earnings are anticipated to grow by at least 20%", this statement being issued notwithstanding that the defendants had full knowledge that large losses were being incurred throughout the first part of 1970, that demands

GLEKEL EXHIBIT D

were being made by the banks for the repayment of many millions of dollars in loans which Beck was utterly unable to meet, that trade debt was seriously in arrears and that the company was insolvent at the time;

(iii) at the annual meeting of May 27, 1970, and shortly prior thereto, the defendants caused statements to be made that the first quarter of the new fiscal year ending on May 2, 1970 exceeded in profits and results the like three months of the previous year without disclosing the enormous losses for January 1970;

(iv) on June 30, 1970, the defendants issued a quarterly statement for Beck covering the period from February 1, 1970 through May 2, 1970 showing an alleged net unaudited income of \$271,000, continuing to conceal from the plaintiff and others the losses for the month of January 1970. Subsequently, on July 10, 1970 and after demands for information regarding results of January 1970 and coincident with the suspension of the listing of the stock of Beck on the American Stock Exchange, the defendants caused Beck to issue a statement for the first time revealing the losses for the

GLEKEL EXHIBIT D

month of January 1970 as amounting to \$1,550,000 after unspecified "credit for future tax benefits resulting from the one month's loss", thereby avoiding full specification of the actual loss for January 1970. The defendants concealed knowledge that the final audited figure for the three month period ending May 2, 1970 would show substantial losses instead of profits for that period;

(b) misrepresented the financial conditions, earnings and prospects of certain of the corporations which they proposed to acquire or merge with Beck and the terms and conditions which they had agreed upon on behalf of Beck for such acquisitions or mergers; and the amounts of the commissions paid and the participants therein in connection with various acquisitions and mergers;

(c) concealed the extent of the liability of the corporation and its subsidiaries to banks and the demands made by certain of the banks with respect to the repayment of loans, including among others, the Franklin National Bank, and the negotiations with other banks regarding the extent of the defaults on bank loans;

GLEKEL EXHIBIT D

(d) misrepresented and concealed the terms and conditions in the acquisition of the discount stores known as "Disco Fair" and the liabilities assumed therewith and the extent of the huge losses incurred from time to time from such units;

(e) concealed the claims for rescission based on fraud and damages in large amounts claimed by parties whose interests were acquired in mergers or acquisitions;

(f) concealed their use of monies of Beck for their private and personal purposes including travel and maintenance of offices for the personal business affairs of the defendants, and in pursuit of business opportunities presented in the first instance to Beck by parties seeking to make arrangements with Beck to be merged or acquired.

SIXTH: Glekel and McDevitt caused Beck to make wholly improvident, reckless, useless and damaging investments, acquisitions and mergers for the purpose of creating alleged appearance of growth and for other personal purposes thereby causing Beck, which prior to their assuming control of the company was in excellent financial condition and operating profitably to become insolvent to the extent of many

GLEKEL EXHIBIT D

millions of dollars with substantially all of its subsidiaries pledged to the banks on vast loans in default.

SEVENTH: At the times referred to above the plaintiff held shares of common stock of Beck with a cost to him of approximately \$1,000,000 and presently retains approximately 32,000 shares.

EIGHTH: The defendants, Glekel and McDevitt, have by their improper, illegal and fraudulent conduct described above, caused the plaintiff large losses by destroying the value of the Beck stock which he held and holds and by inducing him to retain the same, and induced the plaintiff to execute various consents, approvals and votes as a director and Executive Committee member which he would not have signed, approved or voted for had he known the facts concealed from and misrepresented to him as alleged above.

WHEREFORE, the plaintiff requests judgment:

(a) that the defendants be held liable in damages for the financial injuries caused to him as aforesaid in the amount of at least one million (\$1,000,000) dollars.

GLEKEL EXHIBIT D

(b) declaring that to the extent the plaintiff executed any consents, waivers, or approvals in connection with the matters alleged above, the same were obtained by the defendants through their false and misleading statements and actions alleged above;

(c) and for such other and further relief as may be appropriate, together with the costs and disbursements of this action.

Dated: New York, New York
April 23, 1971

David
KRESGE & COHEN ESQS.,
Attorneys for Plaintiff
919 Third Avenue
New York, New York 10022
Telephone: (212) 486-1266

GLEKEL EXHIBIT D

STATE OF NEW YORK)

COUNTY OF NEW YORK)

ss.:

HAROLD K. ROSS, being duly sworn, deposes and says that deponent is the plaintiff in the within action; that deponent has read the foregoing complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

Sworn to before me, this

23rd day of April 1971.

s/ LINDA C. SCHWEN
NOTARY PUBLIC, State of New York
No. 03-3581075
Qualified in Bronx County
Commission Expires March 22, 1972

GLEKEL EXHIBIT E.

WALL STREET JOURNAL
July 6, 1971
Page 4, Column 1

Beck Shareholder Sues Former Executives For \$1 Million Damages

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—A complaint asking \$1 million in damages has been filed in a New York State court against Newton Glekel and Charles F. McDevitt, former chairman and president, respectively, of Beck Industries Inc.

Beck, whose stock hasn't been traded on the American Stock Exchange since last July, when it was sold at \$4.50, filed a petition for reorganization under Chapter 10 of the federal bankruptcy laws in June.

The plaintiff in the court action against Mr. Glekel and Mr. McDevitt is Harold K. Ross, owner of 32,000 shares of Beck stock and a former director and member of the executive committee of the board.

An examination scheduled for June 28 has been rescheduled for July 14.

The complaint states that actions by Mr. Glekel and Mr. McDevitt cost Mr. Ross \$1 million by destroying the value of the Beck shares he held. Both men have denied the accusation and said an individual director of the corporation had no cause of action against the company.

The complaint accuses Mr. Glekel and Mr. McDevitt of making several public statements about growing sales and earnings while they were aware of large losses and demands by banks of repayments of millions of dollars of loans. Also, it says, trade debt was seriously in arrears and the company was insolvent.

More recently, Neptune Raincoat Co., one of the nearly 70 subsidiaries of Beck, also filed Chapter 10 proceedings.

GLEKEL EXHIBIT F.

WALL STREET JOURNAL
July 17, 1970
Page 19, Column 1

Vornado Inc. Begins Talks to Acquire Unit Of Beck Industries Inc.

Vornado Seeks to Buy Disco Fair Chain of Stores; Beck Facing Need for Additional Financing

By a WALL STREET JOURNAL Staff Reporter

GARFIELD, N.J. — Vornado Inc., a discount retailer, said it had opened talks with Beck Industries Inc., New York, a diversified shoe and retailing concern, with a view to acquiring Beck's Disco Fair subsidiary. Disco Fair operates a chain of 12 stores on the West Coast, 10 of which were once owned by Vornado.

No value was placed on the transaction, but one source said the 12 stores had annual sales in the tens of millions of dollars.

Announcement of the talks was made less than a week after trading in Beck stock was halted on the American Stock Exchange, and the company said it was faced by a financial crisis caused by its inability to complete a proposed public offering of \$15 million of convertible subordinated debentures originally scheduled to be made this month. Trading hasn't yet been resumed.

Beck officials met through the weekend with the company's banks and debenture holders in an effort to extend the maturity of Beck's obligations to them and to obtain additional financing. A Beck spokesman declined to disclose the amount of extra financing being sought.

GLEKEL EXHIBIT F

NEW YORK TIMES
July 18, 1970
Page 29, Column 5

Beck Chief Resigns

By HERBERT KOSHEITZ

Beck Industries, Inc., which last week found itself unable to complete a proposed public offering of \$15-million of convertible debentures, announced yesterday that Charles F. McDevitt has resigned as president and chief executive officer.

Mr. McDevitt, 38 years old, came to Beck in 1968 from the Boise Cascade Corporation, where he had been vice president of Boise Cascade's shelter group operations.

It was also made known that Newton Glekel, chairman of the executive committee, had agreed to become chairman of the board and chief executive officer and that Leo Yarfitz would become executive vice president of operations.

Advisory Committee Named

A management advisory committee has also been appointed. It will consist of Morton Seaman for furniture operations; Jesse Wachtel and Larry Epstein, footwear; Burt Brous and Marcia Israel, women's wear; Sam Forman, men's wear, and Dave Conen, apparel manufacturing.

Beck operates 425 stores selling shoes, apparel, furniture and other merchandise. A spokesman for the company said that discussions had been instituted with creditors to seek some extension of time for payments and Beck had asked them to await the outcome of talks with banks and debenture holders.

Trading of Beck stock on the American Stock Exchange was suspended last Friday and the company has requested the exchange to continue the ban on trading pending the outcome of negotiations.

GLEKEL EXHIBIT F

WALL STREET JOURNAL
 July 20, 1970
 Page 7, Column 1

Beck Industries Drops Debenture Offer; Glekel Becomes Chairman, Chief Officer

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—Financially troubled Beck Industries Inc. announced a new management lineup and called off its proposed public offering of \$15 million of convertible subordinated debentures originally scheduled for this month.

Beck, a diversified shoe and retailing concern, also said it had entered into talks with Hartfield-Zodya Inc., operator of a chain of specialty stores throughout the U.S., with regard to "possible management arrangements" for Beck.

Furthermore, Beck said its discussions with its banks and debenture holders—aimed at extending the maturity of its obligations to them and at obtaining additional financing—were continuing. The talks began more than a week ago. Trading in the company's shares on the American Stock Exchange has been halted since July 3.

Beck said that "at the request of common and preferred-stockholder and debenture-holder groups representing certain of the former owners of businesses acquired by Beck," Newton Glekel, 56 years old, would take over as chairman and chief executive officer.

Mr. Glekel, a former president of the New York Daily Column, a tabloid newspaper of opinion and features, had been chairman of the Beck executive committee since he took over control of the company in May 1963 when it was known as A. S. Beck-Shoe Corp. The post of chairman had been vacant since that time. Mr. Glekel controls about 42% of Beck's voting stock.

Charles F. McDevitt, 38, resigned as president and chief executive officer, and Beck said the post of president would remain unfilled for the moment. Mr. McDevitt came to Beck shortly after Mr. Glekel; he had been vice president and secretary of Boise Cascade Corp., a paper and timber-products manufacturer. Mr. McDevitt also resigned as a director of Beck.

Lastly, Leo Yarfitz, who had been active in Beck's shoe operations, was named the company's executive vice president. Mr. Yarfitz has never before held an executive post with Beck.

A company spokesman said that among the shareholder and debenture-holder groups backing the new management lineup were Morton Seaman, Jesse Wachtel, Larry Epstein, Murray Alberts, Burton Brous, Marcia Israel, Sam Forman and Dave Cohen. All active in the company, they will serve on a management-advisory committee. Mrs. Israel, however, has resigned as a director of the company.

Neither Beck nor Hartfield-Zodya would comment further on the announcement that they were having talks with regard to management arrangements for Beck.

A Beck spokesman did say that talks were continuing with Vornado Inc., a discount retailer, with a view to Vornado's acquiring Beck's Disco Fair subsidiary. Disco Fair operates a chain of 12 stores on the West Coast, 10 of which were once owned by Vornado.

Beck originally asked the American exchange for a temporary suspension in trading of its stock "to protect stockholders and prevent speculative trading" after the managing underwriter for the proposed \$15 million public offering of debentures decided to await results for the second fiscal quarter ending Aug. 1. The report is expected to be issued in September. The company previously reported earnings of \$271,000, or one cent a share, on sales of \$54.2 million for the 12 weeks ended May 2, up from net of \$247,000 on sales of \$37.6 million for the three months ended April 30, 1969, restated to include companies acquired on a poolings-of-interests basis.

Before restatement for pooled companies acquired after April 30, 1969, Beck had a net loss of \$25,000 on sales of \$30.7 million for the three-month period.

Beck also reported previously that it had a net loss of \$1.5 million—after credit for future tax benefits—in January, on sales for the month of \$16.6 million. The \$1.5 million loss included about \$238,000 of net losses from the Disco Fair subsidiary.

As of Jan. 1, Beck changed from a calendar year, to a 52 or 53-week fiscal year ending on the Saturday nearest Jan. 31.

GLEKEL EXHIBIT F

Wall Street Journal
July 23, 1970
Page 6, Column 3

Beck Industries Sells Furniture Subsidiary In Reorganization Step

Sale to Broyhill Stores Is for
Undisclosed Sum; One of Two
Other Units May Be Divested

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—As a first step in its financial reorganization, Beck Industries Inc. has sold its Watkins Furniture subsidiary to Broyhill Stores Inc. of North Carolina for an undisclosed amount of cash, Beck's newly elected chairman and chief executive officer, Newton Glekel, announced yesterday.

Mark Williams, Beck's secretary and corporate counsel, said the subsidiary had been sold "principally to raise needed additional capital due to the current liquidity crisis."

Beck, which was forced to call off a proposed public offering of \$15 million of convertible subordinated debentures originally scheduled for this month, has been meeting with its banks and debenture holders since July 10 in an effort to delay the maturity of its obligations to them and to obtain additional financing.

Trading in the diversified shoe and retailing concern's shares on the American Stock Exchange has been halted since July 10.

Mr. Glekel said Beck planned to sell no more than one other subsidiary besides, possibly, its Disco-Fair discount chain to Vornado Inc., previously announced.

Beck also announced discussions with Hartford-Zodys Inc. with regard to "possible management arrangements" had been terminated by mutual consent. Company officials declined further comment on the discussions, which were begun just four days ago.

103a

GLEKEL EXHIBIT F

NEW YORK TIMES
July 31, 1970
Page 44, Column 3

**Beck Industries Appoints
Chief Executive Officer**

Manuel F. Rothberg has been elected president and chief executive officer of Beck Industries, Inc., a diversified retailing company.

Mr. Rothberg, 51 years old, has been president of the W. & J. Sloane-Angelus furniture subsidiary in Los Angeles.

He succeeds Charles F. McDevitt, who resigned recently after Beck found itself unable to complete a proposed public offering of \$15-million of convertible debentures.

The company also announced that Mr. Rothberg has been elected to its board along with Leo Yarfitz, who was named executive president for operations on July 17.

GLEKEL EXHIBIT F

WALL STREET JOURNAL
July 31, 1970
Page 10, Column 1

M.F. Rothberg Named Beck's New President And Chief Executive

McDevitt Succeeded by Former
W.&J. Sloane, Beverly Hills,
Official; Creditors Called Happy

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—Beck Industries Inc., which has been having financial problems, announced the appointment of a new president and chief executive officer to succeed Charles F. McDevitt, who resigned this month.

The new chief is Manuel F. Rothberg, 51 years old, who has been president of W.&J. Sloane of Beverly Hills, a furniture store and manufacturing business, for the past 12 years.

W.&J. Sloane of Beverly Hills isn't associated with the furniture operations of W.&J. Sloane Inc., New York.

Beck's troubles surfaced earlier this month when it was announced that the company, a diversified store and retailing concern, had called off a proposed public offering of \$15 million of convertible subordinated debentures and had been meeting with its banks and debenture holders in an effort to delay the maturity of its obligations to them and to obtain additional financing.

In announcing Mr. Rothberg's appointment, yesterday, Newton Glekel, chairman, said: "Everyone concerned with Beck's future, including banks, debenture holders and operating heads, is delighted with Mr. Rothberg's appointment."

Mr. Rothberg and Leo Yarfitz, who was named executive vice president of Beck earlier this month, also were appointed to the board. Mr. Glekel served as the company's chief executive officer between the resignation of Mr. McDevitt and the appointment of Mr. Rothberg to succeed him.

Mr. Rothberg is a past president of the Furniture Retailers Association and is president of the board of governors of the Los Angeles Furniture Mart. In 1965, he was named "Man of the Year" by the City of Los Angeles.

NEW YORK TIMES
August 13, 1970
Page 53, Column 4

BECK SELLS A UNIT, RAISING MORE CASH

Beck Industries, Inc., a diversified retailing company that recently failed to complete a debt offering, announced yesterday the sale of one subsidiary and the rescinding of two recent acquisition transactions as part of a program to revise its debt structure and raise more working capital.

Beck has sold its Judy's subsidiary, a chain of 17 women's apparel stores in Southern California, to Marcia and Lawrence Israel, the former owners, for cash and other considerations.

Manuel F. Rothberg, Beck's new president, also said yesterday that a transaction has been rescinded. In this transaction the Israels had acquired control of Beck's Liebes' subsidiary, a women's specialty store group in San Francisco.

An agreement in which Beck last year acquired Romay of California, a women's apparel producer, has also been canceled.

Mr. Rothberg said that the three moves and a previous disposition of the Watkins Furniture Company, a furniture chain, would increase cash available to Beck and reduce outstanding senior debt.

WALL STREET JOURNAL
August 13, 1970
Page 11, Column 1

Beck Industries Inc. Reshuffles Subsidiaries To Raise Cash in Crisis

Firm Sells Judy's; Cancels Sale
Of Liebes, Purchase of Romay;
Negotiates Disco-Fair's Disposal

By WALL STREET JOURNAL Staff Reporter

NEW YORK — Beck Industries Inc. announced it sold one subsidiary, rescinded the sale of another and the purchase of a third and is negotiating to sell a fourth in an effort to resolve its financial crisis.

Manuel F. Rothberg, newly named president of the diversified shoe and retailing concern, said Beck has sold Judy's, a California chain of 17 women's apparel stores, to Marcia and Lawrence Israel for cash and other considerations. The amount of cash wasn't revealed. Beck acquired Judy's from the Israels in 1969.

At the same time, the Israels' February purchase of a controlling interest in Beck's Liebes subsidiary has been canceled by mutual consent, Mr. Rothberg said. Liebes, which operates retail stores in San Francisco, reverts to its previous status as a wholly owned subsidiary of Beck.

Mr. Rothberg also said that Beck's 1969 acquisition of Romay of California has been canceled, and that the San Francisco company, a maker of women's apparel, currently is held by its former owners, Jack A. Buller and Howard Moser.

Disco-Fair Negotiations

In addition, Beck announced it is negotiating with John's Bargain Stores Corp. for the sale of its Disco-Fair discount-chain subsidiary. Just a month ago, Beck disclosed that it was negotiating with Vornado Inc. for the sale of that subsidiary.

Terms of the proposed Disco-Fair transaction weren't disclosed. The transaction is subject to execution of a definitive agreement and approval by both Beck and John's directors.

Mr. Rothberg said the net effect of these transactions and the previously announced sale of Beck's Watkins Furniture Co. subsidiary is to increase the amount of cash available to the

company and reduce its senior debt outstanding. Officials declined to disclose the size of that debt.

In the fiscal first quarter ended May 2, Judy's, Romay and Watkins contributed earnings of \$186,000 on sales of \$4.5 million, compared with \$304,000 on sales of \$4.6 million in the year-earlier period.

Second Quarter Losses

The Judy's, Romay and Watkins dispositions resulted in an extraordinary pretax loss of about \$2.5 million, which, according to a Beck spokesman, will be reported in the company's results for the second quarter ended Aug. 1.

Liebes had a first quarter operating loss of \$281,000 on sales of \$1.3 million. According to a spokesman, had these results been included in consolidated results for Beck's first quarter, the company would have had a net loss of \$10,000 rather than the previously reported profit of \$271,000.

Beck's financial crisis surfaced July 19 when it was disclosed that the company was unable to complete a proposed public offering of \$15 million of convertible subordinated debentures. Trading of the concern's shares on the American Stock Exchange has been halted since that date.

Mr. Rothberg said yesterday that Beck is continuing to meet with its banks and debenture holders in an effort to extend the maturity of its obligations and to seek additional financing.

GLEKEL EXHIBIT F

NEW YORK TIMES
September 9, 1977
Page 71, Column 1

BECK IS GIVING UP DISCO-FAIR UNITS

Vornado Plans Repurchase
of the Disco-Fair Chain

By CLARE M. RECKERT

Beck Industries, Inc., which acquired 10 of its 12 Disco-Fair stores from Vornado, Inc., from April to October last year, has sold the 12-unit chain back to Vornado, it was announced yesterday by Frederick Ziesu, chairman of Vornado and Manuel F. Rothberg, president of Beck.

Term were not disclosed because details of the transaction have not been completed.

Although Beck had not operated the stores for a year, their annual volume of business is estimated to be more than \$15-million.

Vornado, it was stated, has already taken over the operation of the stores.

Beck had been negotiating with several possible buyers in the last few weeks. Because Beck still owed Vornado about \$3-million from the acquisition of the store leaseholds last year, one financial analyst said, it seemed more desirable that Vornado reacquire the chain.

The Disco-Fair stores, all in Southern California, are engaged in mass merchandising of both hard and soft goods.

Vornado's other West Coast operations include Food Giant Markets, Builders Emporium, Unimart Discount Stores and Two Guys Discount Department Stores.

WALL STREET JOURNAL
September 9, 1970
Page 25, Column 2

Beck's Disco-Fair Chain Is Purchased by Vornado

By a WALL STREET JOURNAL Staff Reporter

GARFIELD, N.J. — Vornado Inc., a discount retailer, announced the acquisition of the Disco-Fair discount chain from Beck Industries Inc., a diversified shoe and retailing concern.

Terms of the transaction weren't disclosed. Vornado has already taken over the operation of the 12 Disco-Fair stores, which are located in Southern California.

The sale was seen as part of Beck's efforts to resolve its current financial crisis. Trading in Beck's stock on the American exchange has been halted since July 10, when Beck announced it was unable to complete a proposed public offering of \$15 million of convertible subordinated debentures.

GLEKEL EXHIBIT F

NEW YORK TIMES
September 10, 1970
Page 74, Column 4

**3 Resignations Announced
By Beck Industries, Inc.**

Beck Industries, Inc., yesterday announced the resignation of Bertram H. Slater as financial vice president and a director and the resignations of Harold K. Ross and John I. Taeni as directors. Beck, parent company of the A. S. Beck shoe chain and owner of varied other merchandise operations, gave no reason for the resignations.

The three men said their resignations were not related to Beck's present financial difficulties and that there was no connection in their simultaneous departures.

Beck is retrenching an expansion undertaken by Charles F. McDavitt, its former president. This summer Beck was unable to complete a proposed \$15-million public offering of convertible debentures.

WALL STREET JOURNAL
September 10, 1970
Page 12, Column 2

Three Beck Directors, Resign; One Had Been Vice President, Finance

Men Leaving Troubled Concern's Eight-Man Board Deny Moves Are Related to Firm's Plight

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—Three of the eight directors of Beck Industries Inc. have resigned, including one who also left his post as vice president for finance of the troubled company.

The diversified shoe and retailing concern confirmed the departures of directors Harold M. Ross and John L. Taeni and vice president Bertram H. Slater.

Mamuel F. Rothberg, newly appointed president and chief executive officer, declined comment on the resignations, and all of the three men involved denied that their actions were related to Beck's current economic crisis.

Mr. Slater, reached in San Juan, Puerto Rico, refused to discuss speculation that his position as a key member of Beck's former management made his continued presence at the company untenable.

Beck is retrenching on the ambitious expansion program pushed by the former management team, which some observers have suggested is at least partially responsible for the company's current problems.

Mr. Taeni, who said he left because he "couldn't do anything more for the company," is vice president of Weis, Volain & Co. Beck's financial crisis was triggered when that Wall Street securities firm, as managing underwriter, forced a delay and then cancellation of Beck's proposed public offering of \$15 million of convertible subordinated debentures.

The American Stock Exchange halted trading in Beck's shares the same day, July 18, and Beck has been meeting with its banks and debenture holders ever since in an effort to extend the maturity of its obligations and obtain additional financing.

Mr. Ross, a vice president of John C. Falge & Co., an insurance broker, said his resignation as a Beck director was prompted by personal reasons and was in no way related to the other departures.

NEW YORK TIMES
September 12, 1970
Page 35, Column 2

BECK INDUSTRIES BECK INDUSTRIES GAINS NEW CREDIT GAINS NEW CREDIT

Continued From Page 35

Four Banks Also Promise Extension of Maturities on Present Obligations

By H. ERICH HEINEMANN

Beck Industries, Inc., which has been retrenching from an acquisition spree last year, announced yesterday that it had reached agreement in principle with a group of four banks for "substantial additional credit facilities as well as the extension of maturities on the company's present bank obligations" of more than \$20-million.

A spokesman for the company said that the extension would be for an "indefinite" period of time and that the amount of the new credit lines would be between \$5-million and \$10-million. He declined to be more specific.

The interest rate to be charged by the four banks—the Chase Manhattan Bank, the Bank of America, the Manufacturers Trust Company and the Franklin National Bank—had not been finally determined, the company spokesman said, nor had any other terms and conditions that the banks might seek to impose.

According to the company the understanding with the banks "enables Beck to have a more secure financial footing."

Manuel F. Rothberg, who took over as president of Beck following the ouster of Charles F. McDevitt in July, said that "this development is another successful step after several weeks of difficulties for the company, its lenders and suppliers."

In another step, Beck an-

nounced that it had retained the investment banking firm of Wertheim & Co. as financial advisers to work out a plan for restructuring the company's debt. According to Mr. Rothberg, the plan should be completed by the end of the year and would include an extension of existing bank debt for a period of more than five years.

A spokesman for the company added that other techniques for additional financing, including public sale of securities, would also be explored.

Over the last few weeks, Beck has taken a number of steps to raise cash, including sale of some of the 19 companies that it acquired in 1969—many of them with borrowed cash. Furthermore, there has been a wholesale shakeup in management. The resignations of three company officials were announced this week.

Accord at King Resources

A spokesman for the creditors' committee of the Denver-based King Resources Company said yesterday that more than half of the company's trade creditors had indicated their acceptance of the complicated plan that would give King until the beginning of March 1972, to pay off its trade debt. The 50 per cent acceptance, the spokesman said, allowed the committee to extend the period for acceptance until Sept. 25. An 80 per cent affirmative vote is required to put the plan into effect.

GLEKEL EXHIBIT F

WALL STREET JOURNAL
September 14, 1970
Page 15, Column 3

Beck Industries Gets Indefinite Extension On Debt to Four Banks

More Than \$20 Million Involved;
'Substantial Additional Credit'
Also Is Provided in Agreement

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—Beck Industries Inc. reached an agreement in principle with four banks granting the financially troubled company an indefinite extension on the maturity of its obligations to them and providing "substantial additional credit."

While the proposed settlement eases Beck's burden on the more than \$20 million it owes the banks, it still leaves the diversified shoe and retailing concern with obligations of about \$23 million to debenture holders.

A Beck spokesman declined to say how much additional credit the company would receive and added that new deadlines on the maturity of its bank obligations haven't yet been worked out.

Manuel F. Rothberg, president and chief executive officer, called the agreement in principle "favorable," and said that "together with prior steps that new management has taken to divest itself of certain companies and operations, this understanding enables Beck to have a more secure financial position."

Mr. Rothberg also announced that Wertheim & Co., an investment banking firm, has been engaged as financial adviser, and he expressed confidence that a restructuring plan would be completed by the end of the company's fiscal year, Jan. 31.

The plan, he said, would include a "stretch-out of maturities on existing bank debt over a period exceeding five years."

Beck's financial crisis came to light July 10, when it was forced to call off its proposed public offering of \$15 million of convertible subordinated debentures. Trading in the company's shares on the American Stock Exchange has been halted since that date.

Friday's announcement of the proposed settlement with the banks came after two months of meetings.

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GLEKEL EXHIBIT F

WALL STREET JOURNAL
September 23, 1970
Page 21, Column 3

Beck Industries Elects Five To Enlarged Nine-Man Board

NEW YORK — Beck Industries Inc. announced the election of five directors, three of them operating chiefs of subsidiaries, to an enlarged nine-man board.

Elected were Burton Brous, president of Susan Ives; Morton Seaman, president of Seaman's Furniture Co.; William Leiblein, chairman of Carter's Discount Stores; Roderick M. Hills, a Los Angeles attorney, and Richard Katcher, a Cleveland attorney.

Four members of the previous eight-man board resigned recently, including Beck's former president, Charles F. McDevitt, and its financial vice president, Bertram H. Slater.

GLEKEL EXHIBIT F

NEW YORK TIMES
October 3, 1970
Page 45, Column 1

CHAIRMAN RESIGNS AT BECK INDUSTRIES

Beck Industries, Inc., announced yesterday the resignation of Newton Glekel as a director; chairman of the board, a post he held since last July, and chairman of the executive committee, a post to which he was elected in June, 1968.

Maruel S. Rothberg, who took over as president last July following the ouster of Charles F. McDevitt, said he understood that Mr. Glekel resigned for personal reasons but had agreed to remain for advice and consultation. No successor for Mr. Glekel has been named by the company which is engaged in retail sale of furniture, including W. & J. Sloane of Beverly Hills, men's and women's shoes under the A. S. Beck and C. H. Baker names, apparel and accessories, some of which it manufactures, and also operates discount department stores. Carters Discount Stores was acquired last February.

Shares of Beck Industries had been suspended from American Stock Exchange trading last July 10 at the company's request following failure to complete a proposed debt offering. Subsequently, two subsidiaries petitioned for bankruptcy, two others were sold, an acquisition agreement was terminated and a debt-maturity extension and additional credit agreements were negotiated with four banks.

GLEKEL EXHIBIT F

WALL STREET JOURNAL
October 5, 1970
Page 18, Column 1

Beck Industries Says Glekel, Chairman, Quit After 2 Months in Job

Two Other Posts Also Given Up; Sources Cite Retrenching on Expansion Program as Reason

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—Beck Industries Inc., a shoe manufacturing and retailing concern, announced that Newton Glekel has resigned as chairman after having held the post for little more than two months.

Mr. Glekel, 56 years old, also resigned as a director and as chairman of the executive committee, posts he had held since May 1969 when he took over control of the company. A successor wasn't immediately named.

Outsiders attributed his resignations to the fact that the company, once known as A. E. Beck Shoe Corp., was retrenching on the ambitious expansion program that he undertook in mid-1968.

Mr. Glekel, a former president of the New York Daily Column, a tabloid newspaper of opinion and features, controls about 45% of Beck's voting stock. It couldn't be immediately learned if he plans to divest himself of any or all of his interest.

Mr. Glekel also had served as Beck's chief executive officer following his appointment as chairman last July. He relinquished the post of chief executive when Manuel F. Rothberg, 51, was named president in late July.

Mr. Rothberg, a Los Angeles furniture store executive, assumed the post when he took over the presidency, succeeding Charles F. McDevitt, who resigned. Mr. McDevitt, 38, had come to Beck shortly after Mr. Glekel, after having served as a vice president of Boise Cascade Corp., the paper and lumber products manufacturer.

Beck's executive changes have included the recent departures of three directors, one who was a vice-president of the company, and their replacement by five new directors on the board was enlarged to nine seats.

Financial troubles at Beck surfaced last July, a week before Mr. Glekel's appointment as chairman, when the company announced it had called off a proposed public offering of \$10 million of convertible debentures and had been meeting with its banks and debenture holders in an effort to delay the maturity of its obligations to them. Subsequently it was announced

that the company had reached an agreement in principle with four banks for an indefinite extension on the maturity of Beck's obligations to them and providing "substantial additional credit."

In announcing Mr. Glekel's resignation as chairman, Mr. Rothberg said he understood the action was taken for personal reasons. "We all owe a great deal to Newton Glekel," he said. "His integrity and sound advice have been major contributions to Beck, and we shall continue to call upon him often for his counsel," he added.

NEW YORK TIMES
October 8, 1970
Page 71, Column 4

Beck Industries Expecting a 'Modest Operating Loss'

By ISADORE BARMASH

Beck Industries, Inc., a troubled retailing empire that has recently been coughing up several undigestible acquisitions, has some more divestitures on the way on its road to profitable operations.

In the meantime, however, it will soon report a "modest operating loss" for the six months ended Aug. 3, said Manuel F. Rothberg, president, but a considerable loss from recent divestitures of subsidiaries and "other extraordinary losses."

The concern, formerly known as the A.S. Beck Shoe Corporation, plans to hold back on any new acquisitions, after making some 20 last year, and expand its various types of retail stores in order to obtain internal growth. These expansion plans include its Susan Ives chain of young sportswear stores, now numbering 20, which could reach as many as 150 units in the next few years, Mr. Rothberg said.

In his first interview since becoming president of the financially troubled company on July 30, Mr. Rothberg said that he was "confident that banks now will extend their loan agreements to run for at least 5 years and as long as 10 years."

'Urgency' Removed

The "urgency" in the Beck picture has been removed by a series of new financial arrangements, the divestitures of such subsidiaries as Judy's, a West Coast chain of stores, and easing of debt pressure by approved petitions of voluntary bankruptcy for two subsidiaries providing for new creditor arrangements.

"There is no chance for any other Chapter XI proceedings under the Bankruptcy Act for any other of our subsidiaries," he said.

The new Beck president, 51

years old and a Californian, is an unusual choice for the job of a company whose stock was suspended on the American Stock Exchange July 10 at Beck's own request following its failure to complete a debt offering. Usually a financial or administrative man is installed at the head of a company in those straits and usually a man in vigorous health.

Sold Furniture

Mr. Rothberg is not exactly either. He is first a furniture merchandiser and producer, heavily oriented in styling. Secondly, he is a coronary patient, a fact which he freely admits, pointing out that "my

doctor has given me a great, big green light." But he still walks miles every day to keep in trim.

The former president of Beck's W. & J. Sloane-Angelus furniture subsidiary in Los Angeles believes that the parent concern's plummeting earnings and sharp decline in stock value had two basic causes. One was several "non-synergistic" acquisitions last year. The other was "our inability to stay modern in our presentation in some of our stores, notably our Beck shoe operation," he said.

So, divestitures of non-and less-profitable entities is "the way, while in Beck's more than

300 stores of various types efforts are being made in promotion, media use and display to present a "modern image."

There is a certain amount of paradox in the divestitures, however. "In my opinion, the divestitures are part of an elementary growth to achieve a more profitable Beck Industries. It will give us the opportunity to have considerable tax-loss carry forward which will then make our company more able in the future to become involved in new acquisitions," said Mr. Rothberg.

He added, "So, we are retrenching in order to grow."

GLEKEL EXHIBIT F

WALL STREET JOURNAL
November 4, 1970
Page 29, Column 1

Beck Industries Names H. Engelhardt President M.F. Rothberg Chairman

By a WALL STREET JOURNAL Staff Reporter

NEW YORK — Beck Industries Inc. announced the appointment of Manuel F. Rothberg, 51 years old, as chairman, replacing Newton Glekel, 56, who resigned last month after having held the post for just two months.

Herbert Engelhardt, 45, a former vice president of Lazard Freres & Co., a securities firm, was named to succeed Mr. Rothberg as president of the diversified shoe and retailing concern. He also was named a director.

Mr. Rothberg will continue as chief executive, a post to which he was elected last July when named president of the financially troubled company.

Yesterday's appointments represent a major consolidation of control by the new management team headed by Mr. Rothberg, which has been retrenching on an ambitious expansion program pursued by the former management.

In commenting on the appointment of Mr. Engelhardt, his hand-picked successor, Mr. Rothberg said, "I feel this addition considerably strengthens the new management of Beck Industries."

Beck's financial crisis surfaced last July, three weeks before Mr. Rothberg became president, when the company was forced to call off a proposed public offering of \$15 million of convertible subordinated debentures. Since then, the company has agreed in principle to extend the maturity of its bank debt and receive "substantial" new credit.

GLEKEL EXHIBIT F

NEW YORK TIMES
November 4, 1970
Page 75, Column 7

Executive Changes

Herbert Engelhardt has been elected president and a director of Beck Industries, Inc., succeeding Manuel F. Rothberg, who was appointed chairman of the board and will continue as chief executive officer.

Robert B. Anderson, former Secretary of the Treasury, has been elected to the board of director of the C.I.T. Financial Corporation.

Jay C. Beckley has been made vice president of finance of the USLIFE Corporation.

S. A. Segal has been named vice president of administration and finance at the National Starch and Chemical Corporation.

James J. Rutherford has been elected executive vice president of Giffen Industries, Inc.

Charles C. Woodard Jr. has been appointed corporate vice president and assistant general manager of the Cable Television Division of the Teleprompter Corporation.

GLEKEL EXHIBIT G.

NEW YORK TIMES
August 29, 1970
Page 31, Column 5

LIEBES IN A MOVE TO PAY ITS DEBTS

San Francisco Store Chain
Files Under Chapter XI
of Bankruptcy Act

By ISADORE BORM .SH

The first sizable business failure in the current, prolonged slump in retailing was announced yesterday in San Francisco when one of that city's oldest specialty store chains, H. Liebes and Company, filed a Chapter XI petition under the Bankruptcy Act in Federal Court.

Liebes and four subsidiary corporations, all units of Beck Industries, Inc., New York, listed consolidated liabilities of \$4,902,646 and consolidated assets of \$3,210,553. The chain, which had been operating seven stores in the Bay area, closed three in the last month and still operates four.

Under the Chapter XI proceedings, Liebes proposes to file a plan whereby it can pay its debts which it is now unable to do and asks for all collections by creditors to be stayed pending the case's disposition. Lynn J. Gillard, a bankruptcy referee, has signed an order allowing the chain to continue in possession of its stores and to operate pending approval of the repayment plan.

Another Beck Industries subsidiary, the Peddler's group of four stores operating from Anderson, Indiana, is also expected shortly to file a Chapter XI petition, Manuel F. Rothberg, president of Beck's, said yesterday in San Francisco.

Poor Conditions Reflected

Since last fall, business in many stores across the country has reflected the adverse effects of a slowdown in the economy and consumer shopping hesitancy over inflation, rising prices and, to some extent, fashion changes.

Beck Industries, a diversified retailing company which acquired the Liebes chain last year in an aggressive acquisition program, has been sharply affected by the business slowdown, which was reflected in Beck's dwindling profits and a big drop in its shares on the

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Beck Industries, a diversified retailing company which acquired the Liebes chain last year in an aggressive acquisition program, has been sharply affected by the business slowdown, which was reflected in Beck's dwindling profits and a big drop in its shares on the American Stock Exchange.

Liebes, a century-old retailer, had net sales of \$8,075,410 and a net loss of \$65,847 in the fiscal year ended Jan. 31, 1969, and higher losses this year, according to a Beck prospectus.

In that report, Beck's management stated last March "It is the company's opinion that the increased losses of Liebes are due principally to its inability to obtain merchandise in sufficient quantity and on a timely basis because of a shortage of working capital and the failure of management to reduce the expense structure commensurate with the decline in sales and poorer gross margins."

Mr. Rothberg, in commenting on the Liebes' bankruptcy petition, said, "I want to emphasize that our decision to meet with the creditors of Liebes under the protection of the court was made primarily to protect these creditors. The company expects that a satisfactory accommodation with creditors will be reached."

After noting that Peddler's, which also operates under the Towne Trader name, would file a similar petition sometime during the day, he added, "No similar action is intended to be taken with respect to the company or any other subsidiary of Beck."

GLEKEL EXHIBIT G

NEW YORK TIMES, August 30, 1970, Columns I, II & III

At Beck: Acquisition Indigestion

By ISADORE BARMASH

A month ago, bustling, steely-eyed Charles F. McDevitt abruptly departed as president of troubled Beck Industries, Inc., after the retailing conglomerate failed to attract enough buyers for a convertible-debenture issue and withdrew it.

Last week, his successor, Manuel F. Rothberg, frantically huddled with banking officials and others from financial institutions, seeking new arrangements to repay about \$25-million in short-term debt.

During the intervening weeks, Newton Glekel, Beck's chairman, a bouncy financier and sometime doctor of troubled companies, maneuvered in the background. He urged patience on lenders and faith on the part of banks, while expressing confidence in Mr. Rothberg.

Trading Suspension Sought

Confidence was certainly what was needed for the former A. S. Beck Shoe Corporation. After Mr. Glekel's 1968 purchase of a controlling share caused the company's stock to catapult in a single day from \$12.75 to \$90, reduced profits and rising debts early in July brought the stock all the way back, falling 90 per cent from that 1968 high. And to keep the stock from declining further, Beck asked the American Stock Exchange to suspend the trading in its securities.

ACQUISITIONS IN 1969 BY BECK INDUSTRIES, INC.

Date Acquired

Disco Fair Discount Stores.....Jan. 31

Genarco StoresFeb. 4

Susan Ives Stores.....Feb. 19

Donmar AdvertisingFeb. 28

Lathrop Outfitting, Inc.Feb. 28

Loewenstein's Outfitting, Inc.Feb. 28

Watkins Furniture Co.Feb. 28

Judy's Merchandising Corp.Mar. 5

Joseph Salon Shoes, Inc.Mar. 11

Junior Boutique, Inc.Mar. 31

Silvercrest Hosiery Co., Inc.Mar. 31

Nancy Greer Inc.May 16

The Peoples Outfitting Co.June 10

Webster Clothes, Inc.June 13

Seaman's Quality Furniture Co. ..Aug. 8

Neptune Raincoat Co.Aug. 13

W & J Sloane of Beverly Hills....Sept. 26

Carier's Discount Stores.....Sept. 30

H. Liebes Company.....Oct. 31

Salz Leathers, Inc.Nov. 3

The New York Times

AUG. 30, 1970

The reasons for the comings-and-goings of the executives and for the company's financial problems revolve around the acquisition syndrome — the frenzied drive to achieve instant growth and instant earnings by buying companies — which was one of the most dramatic characteristics of American business in the sixties and still continues, if at a diminished pace, in the seventies.

In 1969, Beck bought at least 20 companies and committed itself for four more in a program generated by

Mr. Glekel and carried out by Mr. McDevitt. But at least four of the acquired companies performed at less than the expected level, while the slowdown in the economy curbed the parent company's growth generally. The break between the two executives came with stunning impact within the company and reportedly was climaxed in bitter words.

Buy, Buy And Buy

Mr. Glekel had met Mr. McDevitt in 1967, when the New York financier sold the Divco-Wayne Corporation, a vehicle and mobile-home producer that he had put together from a school bus factory in Richmond, Ind., to the Boise-Cascade Corporation, where Mr. McDevitt was an officer and general counsel. Liking Mr. McDevitt's style, Mr. Glekel hired him at a big salary and instructed him to buy, buy and buy.

And so he did. Men's wear, women's wear, furniture and discount stores all were rapidly moved into the Beck fold, as well as several manufacturing companies. Sales volume jumped almost 60 per cent last year to \$198-million and profits rose 24 per cent to \$5.6-million. And the number of company stores rose to almost 500.

The two executives pumped each other's hand repeatedly. But what they didn't count on was the sales erosion that ballooned from the decline in the national economy. If that hadn't happened, Beck could have weathered the unhappy performance in some of the acquisitions. But the combination of the two was too much, as reflected in the plummeting of the stock and the disinclination of debenture buyers to partake in an issue that could have brought about \$15-million.

An earlier planned stock offer of 400,000 shares that would have realized some \$20-million was called off because of the souring of the stock market, so that the Beck management had put much hope in the new debenture issue as the source of new money. And money was needed, not merely to pay for acquisitions but for big bank debt.

GLEKEL EXHIBIT G

NEW YORK TIMES
August 30, 1970
Columns I, II & III
(Cond.)

Credit Arranged

A revolving credit arrangement had been made with several banks to take effect on the sale of the notes. The lending institutions would have created a pool of about \$25-million, but they wanted the company to raise some new capital, too.

"If Glekel and McDevitt would have carried off their plan, they would be heroes today," said a source close to the company. "As it turned out, they are less than that."

Added another source on Wall Street, "The Beck story raises some interesting questions about business judgment. Is a management that has a program of creating a broad-based company by making lots of acquisitions considered to have bad judgment if the economy turns bad and the program falls flat? What's the answer?"

His last question was, of course, rhetorical. The decision had already been made by investors in the stock market and by the reluctant buyers of the debenture issue.

After the appointment of

Mr. Rothberg, the 51-year-old president of the concern's W. & J. Sloane subsidiary in Los Angeles, as Beck's president, the company took steps to realize several million dollars by selling back Judy's, a 17-store apparel chain, to its former owners and by rescinding two other transactions. In addition, negotiations were under way first with Vornado, Inc., then with the Empire Financial Corporation, and finally with John's Bargain Stores, Inc., to acquire Beck's Disco Fair discount stores in California.

More to be Done

But more obviously remains to be done, to satisfy bank debt and notes coming due with frequency.

Not long ago, faced by a pressure from trade creditors to do something about a squeeze on cash flow, Beck took the step of hiring a prominent bankruptcy law concern and did not try to conceal that fact. Was it an effort to frighten trade creditors that, unless they showed

a bit more patience, the company might take steps that ultimately would mean that the creditors would realize considerably less than full repayment? Or was it a sincere attempt to learn about the Bankruptcy Act's provisions, and by so doing, to avoid falling into that state?

Last week, Beck's top executives pleaded that they were too busy trying to right their ship to answer any questions. But the word that emanated from the company's headquarters was that efforts were reaching a state where "positive developments" may be announced very shortly.

Will Beck make it? Opinions in the trade and financial circles vary, but the majority feel that much will depend upon economic conditions in the current quarter and particularly in the year's final quarter. And much, too, will depend upon the attitude of trade creditors and the financial institutions.

GLEKEL EXHIBIT G

WALL STREET JOURNAL
August 31, 1970
Page 4, Column 5

Beck Industries Units, H. Liebes and Peddler's, File Under Chapter 11

Both Are Women's Apparel Chains;
Sale of Controlling Interest in
Liebes Recently Was Rescinded

A WALL STREET JOURNAL News Roundup

H. Liebes & Co., a women's retail apparel chain, and four of its affiliates filed Chapter 11 petitions under the Bankruptcy Act in Federal court in San Francisco. The chain is a subsidiary of Beck Industries Inc., New York.

In addition, The Peddler's Inc., a Beck subsidiary that operates women's specialty stores in Indiana, Wisconsin and Illinois, filed a Chapter 11 petition Friday, according to Manual F. Rothberg, Beck's president.

Just two weeks ago, Beck announced it had rescinded by mutual consent the February sale of a controlling interest in Liebes to Marcia and Lawrence Israel as part of an effort to resolve the corporation's current financial crisis.

Beck's troubles surfaced July 10, when it was revealed that the company was unable to complete a proposed public offering of \$15 million of convertible subordinated debentures. Trading of the concern's shares on the American Stock Exchange has been halted since that date.

Mr. Rothberg stated, "I want to emphasize that our decision to meet with the creditors of Liebes under the protection of the court was made primarily to protect these creditors. The company expects that a satisfactory accommodation with creditors will be reached." He also said that "no similar action is intended to be taken with respect to the company or any other subsidiary of Beck."

An official of Liebes said, "Despite the company's desire to avoid taking extreme measures, a number of creditors have taken actions to the point where Liebes had no other recourse than to file under Chapter 11."

The consolidated liabilities of Liebes and the four affiliates totaled \$4,902,646. Consolidated assets totaled \$3,210,553. Included in the assets is inventory owned by Liebes of \$928,752. The chain still operates four stores in the San Francisco Bay area, though three have been closed in the past month.

Under Chapter 11, Liebes proposes to file a plan for paying its debts, which it is unable to meet now, the company said. An order allowing it to remain in possession of its stores and continue operations pending possible acceptance by creditors of a plan was signed by bankruptcy referee Lynn J. Gillard.

Under Chapter 11, all creditor collection action is stayed pending disposition of the case.

WALL STREET JOURNAL
October 12, 1970
Page 10, Column 4

Beck Industries Posts \$651,000 Loss in Half Before Special Items

Firm Had Extraordinary Deficit
Of \$19.7 Million Due to Selling
Units, Losses of 2 Subsidiaries

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—Beck Industries Inc. reported a net loss of \$651,000 from continuing operations before extraordinary items for the first half, ended Aug. 1, compared with earnings of \$533,000 a year earlier.

Sales from continuing operations were \$87.9 million, up from \$65.2 million a year earlier. Results for 1969 were restated to reflect the disposition of certain subsidiaries and the company's change from a calendar year to a fiscal year ending Jan. 31.

The diversified shoe and retailing concern incurred an extraordinary loss of \$19.7 million in the first half, attributed to the disposition of subsidiaries and provision for losses on two other subsidiaries under court bankruptcy jurisdiction.

Not included in results reported are five companies that have been sold—Watkins Furniture Co., Judy's Merchandising Corp., Romay of California, Nancy Greer Inc., and Disco-Fair—and two under court jurisdiction, H. Liebes & Co. and Peddler's Inc.

In addition, the proposed sale of Peoples Outfitting Co., currently being negotiated, has been given pro-forma effect, and first half results (net loss of \$207,000 on sales of \$2.4 million) also have been excluded.

The operations not included had a combined net loss of \$2.4 million on sales of \$31.8 million in the first half, compared with earnings of \$624,000 on sales of \$17.7 million a year earlier.

Per share figures weren't reported because trading in Beck shares on the American Stock Exchange has been halted since July 10, when the company disclosed a financial crisis triggered by its inability to complete a proposed public offering of \$15 million of convertible subordinated debentures.

WALL STREET JOURNAL
November 18, 1970
Page 4, Column 3

H. Liebes, Subsidiary Of Beck Industries, To Cease Its Business

Firm, Protected From Creditors
By Bankruptcy Act, Couldn't
Arrange Additional Financing

By a WALL STREET JOURNAL Staff Reporter

SAN FRANCISCO—H. Liebes & Co., a 106-year-old women's specialty-store chain currently a subsidiary of Beck Industries Inc., announced it is going out of business.

In New York, a spokesman for Beck said the company was unable to arrange financing to satisfy creditors or continue operations of the subsidiary.

Since Aug. 28, Liebes has been operating under Chapter 11 of the Bankruptcy Act. At the time that the petition for protection against creditors was filed, Manuel F. Rothberg, Beck chairman, said, "The company expects that a satisfactory accommodation with creditors will be reached."

Both Beck and the Liebes creditors, however, have agreed on the necessity of liquidation, and the bankruptcy referee, Lynn J. Gillard, has named a San Francisco attorney, John England, as trustee to handle the Liebes liquidation.

Mr. England said two of Liebes' four stores will close immediately, while two others will continue to operate at least through Christmas. The president, general manager, and general merchandise manager of the chain have already left the firm.

When Liebes went into Chapter 11 proceedings, it listed assets of \$3.2 million and liabilities of \$4.9 million.

A Beck spokesman said Liebes has lost money since it was acquired in early 1968, and had also shown losses for the five previous years. In 1969, Liebes accounted for about \$8 million of Beck's total sales of \$198 million.

GLEKEL EXHIBIT G

WALL STREET JOURNAL, November 24, 1970, Page 39, Column 3

Heard on the Street

By DAN DORFMAN

About two years ago, all it took to make a stock jump quickly and sharply—even one with practically no interest—was an association with Newton Glekel. It happened both with Beck Industries, essentially a shoe chain, and Hygrade Food Products. But that was yesterday. And the disciples of the 56-year-old entrepreneur with a reputation as a "hot deal maker" have shrunk dramatically in number.

"You're talking about yesterday's hero," says one angry Beck holder with a paper loss of nearly \$70,000. "I bought a man and I'm losing my shirt . . . and I wouldn't touch any Glekel stock," he declares.

But the subject of his anger rejects the view that "investors were buying me." Mr. Glekel, pacing back and forth as he spoke and puffing away at one cigar after another, says: "They were buying eternal optimism, the climate of the times, the willingness to pay 30, 40 and 50 price-earnings multiples. They may have bought the stocks, but they can't blame me for that. I never recommended them to anybody."

However, the official talks a little less enthusiastically than he did in his heyday of 1968. Equally prevalent, though, is a fierce determination to prove, as he puts it, "that I can come back . . . that I'm a man of ability, integrity and leadership."

If stock prices are any barometer, however, Mr. Glekel has a lot of fence-mending to do to recapture Wall Street's interest. In 1968, the official's purchase of the controlling interest in Beck was sufficient to push the stock from a low of 5 1/4 to a high of 40. Figuring he could work the same magic at Hygrade, many speculators jumped into the shares of the food company, with a resultant leap in the price of the stock from a low of 19 1/4 to a high of 82.

But a lot has changed since then. Beck—Glekel is totally out of its management—was sold yesterday by one over-the-counter market maker in the stock at a bid price of \$1. Trading in Beck shares on the American exchange was halted July 10, following disclosure of a financial crisis at the company. And Hygrade, also listed on the American exchange, closed yesterday at 10 1/4, off roughly 60 percent from its 1968 high.

Mr. Glekel, who is Hygrade's chairman, has been selling his original stockholdings in Beck, based on his positions of 100,000 shares at Beck and 80,000 at Hygrade, for a while with a commission.

The view in at least some Wall Street quarters is that it's unlikely the full amount of these losses will ever be recouped. For one thing, some observers argue that any recovery in these issues may well be buffeted by the potentially heavy sale of stock from disenchanted investors who are anxious to recoup at least part of their losses. And despite their already sharp declines, the stocks, in the opinion of several analysts, should continue to be viewed as highly speculative.

But Mr. Glekel doesn't share this pessimism. "I've got to prove my worth again and I think I'm going to prove it at Hygrade," he says. "I'm giving it a great deal of my time."

As for Beck, Mr. Glekel contends it was a victim of tight money, a selloff in the retail business and a poor economy. "If the Beck crisis (its need for funds) hadn't arrived during the period of the Penn Central problems, I think the current situation would be a lot different," he says. "If I wish, I probably could sell the Beck stock, but I haven't any intention of doing it." He adds, "I'll wait and see what happens."

In the past, at least, Mr. Glekel's enthusiasm for Hygrade has run far ahead of its achievements. For example, in February 1969, he indicated in an interview that Hygrade had the potential to earn about \$5 a share in the year ending Nov. 30, 1969. The company didn't even come close. It managed to post an operating profit of 95 cents a share, but the closing of unprofitable plants resulted in a full-year net loss of \$6.4 million.

In a statement about the company last February, during which he characterized Hygrade as a "classical turnaround situation," Mr. Glekel forecast a substantial rise in first half net. As it turned out, the company, which has a tax-loss carryforward of about \$25 million, reported tax-free operating profit of \$1.4 million, up from \$1.2 million. But per-share net for the half, before extraordinary items and after preferred dividends, fell sharply to 46 cents a share from a year earlier 81 cents.

Figures for the full year ended Nov. 1 are still being tabulated, but Mr. Glekel estimates operating net, on the basis of the application of full taxes, at between \$1.25 a share and \$1.30 a share. He estimates sales at about \$350 million, down from fiscal 1969's \$359.8 million.

For fiscal 1971, Mr. Glekel sees further improvement in operating net. He notes, though, that sales mightn't be up because of the continuous elimination of low-profit-margin operations.

Mr. Glekel says that "to prove it's a true turnaround situation, we should do it (build profitability) without acquisitions." He adds, though, that "we aren't adverse to acquisitions if something comes along in an allied field," but he says, "we aren't looking for deals."

He contends that the company is making headway through such actions as reshaping top management, headed by Richard Berg, president and chief executive officer; the continued closing of marginal operations; a drive to improve productivity; efforts to expand the franchise market, and moves aimed at increasing the efficiency of the marketing operations.

In assessing his own personal role, Mr. Glekel observes: "If you're quarterback of a team and you don't win, you take the rap whether you're at fault or not. That's life. But I'm a proud guy. I accept that part of what's happened is my responsibility. But I must come back and I will."

ANALYSIS: Bateman Eichler, Hill Richards, Los Angeles, has reports on Royal Indus of America, Hartman Electronics, San Diego Gas & Electric, plus comment on Dr. Pepper, Burnham, on tax-switch suggestions. . . Eastman Dillon, Union Securities on electric utilities.

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WALL STREET JOURNAL
December 15, 1970
Page 8, Column 2

Beck Reports Deficit From Continuing Work For 39-Week Period

But Extraordinary Charges Due
To Disposition of Subsidiaries
Causes Total Loss to Multiply

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—Financially troubled Beck Industries Inc. reported a net loss of \$1.6 million from continuing operations before extraordinary items for the 39 weeks ended Oct. 31, compared with earnings of \$1.4 million in the year-earlier period.

The diversified shoe and retailing concern had a total deficit of \$25.7 million for the period, including a \$5.6 million net loss from discontinued operations and an extraordinary loss of \$18.5 million.

In the comparable period last year, Beck had earnings of \$2.4 million, including \$969,000 from discontinued operations.

Sales from continuing operations were \$126.3 million, up from \$104 million a year earlier. Discontinued operations had sales of \$39.5 million, up from \$36.5 million last year.

Year-earlier results are restated to reflect the company's change from a calendar year to a fiscal year ending the nearest Saturday to Jan. 31.

Beck officials declined comment on the sharp losses, other than to attribute the \$18.5 million extraordinary loss primarily to the dis-

position of subsidiaries subject to Federal bankruptcy laws.

Trading in Beck's shares on the American Stock Exchange has been halted since July 10, when the company disclosed it was unable to complete a proposed public offering of \$16 million of convertible subordinated debentures.

Since that time the company has been retrenching on an ambitious expansion program fostered by the former management.

GLEKEL EXHIBIT G

WALL STREET JOURNAL
December 16, 1970
Page 25, Column 1

Digest of Earnings Reports

FILIATED FUND		COMMON FUND	
Oct. 31, '70	Oct. 31, '69	9 mo Sept 30, 1970	1969
Asst shr	\$56.47	58.72	
Net asset	1,473,917,818	1,731,922,530	
Cap shrs	227,940,487	210,810,004	
a-After capital gains distribution of 42 cents a share paid Dec. 15, 1969.			
ID INC.		9 mo Sept 30, 1970	
		1969	
Shr earns		5.29	
Revenues		12,271,068	
Net income		530,103	
a-Comparative figures not available.			
ANALOG DEVICES INC.		Year Oct 31: 1970	
		1969	
Shr earns		\$1.18	\$1.50
Sales		10,431,000	8,765,000
Net income		223,000	616,000
Quar shr		.05	.19
Sales		2,498,000	2,830,000
Net income		62,000	240,000
ASHLAND OIL INC.		Year Sept 30: 1970	
		1969	
Shr earns		\$2.09	\$2.42
Sales		1,407,166,000	1,249,189,000
Inco		51,090,000	56,880,000
Spec chg		b13,321,000	
Net inco		c37,769,000	56,880,000
a-Based on income before special charge. b-Net write-off of \$17,021,000 reflecting provisions for possible future losses on foreign oil operations and for possible relocations, consolidations, and discontinuance of domestic chemical operations, less a gain of \$3,700,000 from the sale of the company's 14.12% interest in American Independent Oil Co. c-Equal to \$1.46 a share. d-Restated to include acquisitions on a pooling-of-interests basis.			
BECK INDUSTRIES INC.		39 WK Oct 31: 1970	
		1969	
aSales		\$126,319,000	\$103,963,000
Loss on op		1,595,000	b1,431,000
Loss disc op		5,436,000	b969,000
Loss		7,231,000	b2,400,000
Spec charge		d18,452,000	
Net loss		25,683,000	b2,400,000
a-From continuing operations. b-Income. c-Restated to reflect the company's change from a calendar year to a fiscal year ending the nearest Saturday to Jan. 31. d-Primarily due to the disposition of certain subsidiaries and provision for two subsidiaries subject to Federal bankruptcy laws.			
FABRICE NATIONAL INC.		9 13 WK Oct 31: 1970	
		1969	
Shr earns		\$5.645,064	\$5.74
Sales		5,992,209	
Loss		72,056	b132,979
Tax credit		6,615	9,499
Net loss		65,441	c142,478
Cap shares		1,025,400	950,000
a-Based on income before tax credit. b-Income. c-Income, equal to .15 cents a share.			
FOUR STAR INTERNATIONAL		Year June 27: 1970	
		1969	
Shr earns		\$5.159,861	\$5.70
Gross inco		11,806,458	
Loss		334,901	b132,049
Tax credit			127,000
Net loss		334,901	c259,049
a-Based on income before tax credit. b-Income. c-Income, equal to .39 cents a share.			
HARVEY GROUP INC.		9 mo Oct 31: 1970	
		1969	
Shr earns		\$5.44	
Revenues		\$23,150,000	23,783,000
Loss cont op		55,000	b694,000
Loss disc op		265,000	
Loss		370,000	c694,000
Spec items		d738,000	e90,000
Net loss		558,000	f784,000
a-Based on income before special items and on common and common equivalent shares. b-Income, equal to 44 cents. c-Income. d-Charge; provision for estimated losses on discontinuation of the operations of Interstate Record Distributors, Inc. e-Credit; provision for a gain on disposition of certain discontinued operations of \$215,000 and a loss on an investment of \$125,000, both net of related income taxes. f-Income, equal to 50 cents a share. g-Restated by company.			

BECK PLANS SALE OF SEVERAL UNITS

Deal Is Set for Part of Shoe and Handbag Operations

By ALEXANDER R. HAMMER

Beck Industries, Inc., a financially troubled concern, announced yesterday that it had signed an agreement in principle with Frank T. Grassie whereby a corporation controlled by him will acquire a substantial portion of Beck's present shoe and handbag operations. Beck also disclosed

Merger News

that its major bank and institutional creditors had agreed to extend to June 30, 1971, the time for payment of principal and interest on Beck's indebtedness due Feb. 28, 1971. This extension will permit further progress on the financial and operating restructuring of Beck Industries and completion of documentation of the purchase by Mr. Grassie. He is a vice president of the U. S. Shoe Corporation and president of its retail development division.

No U.S. Shoe Link

Mr. Grassie's corporation, which was not identified, will have no connection with U. S. Shoe.

Beck said that its major bank creditors agreed in principle to a seven-year extension of maturities of Beck's indebtedness. The first specified payment on principal is to be made in 1974 with provision for earlier payments if certain levels of income are achieved by Beck. Beck said it is now seeking required consents from other banks.

The acquisition by Mr. Grassie and the restructuring plan are subject to approval by Beck's board and stockholders plus the company's bank and institutional creditors.

Takes Reins Jan. 1

Mr. Grassie will leave U. S. Shoe on Jan. 1 and assume management of the Beck and C. H. Baker retail shoe chains, the Windsor and Savoy shoe-manufacturing facilities and the Madison handbag operation. Formal acquisition will take place at a later date.

Beck said the purchase price was to be the book value, subject to certain adjustments, of the acquired businesses.

The purchase price for the acquired properties will be paid through the assumption by Mr. Grassie's corporation on a long-term basis of bank and institutional debt of Beck. As a result of this assumption, Beck said it was expected that its direct debt would be reduced by \$10-million to \$12-million.

A portion of the debt assumed by Mr. Grassie's corporation will be guaranteed by Beck.

In September, Beck said it had reached agreement in principle with a group of four banks for substantial additional credit as well as extension of maturities on the company's present bank obligations of more than \$20-million.

A spokesman for Beck at that time said the extension would be for an "indefinite" period of time and that the amount of the new credit lines would be between \$5-million and \$10-million.

Western Air Lines Will Get 3 Seats on American Board

Western Air Lines, which recently accepted a purchase offer from American Airlines, said it would receive three out of 21 directors' seats on the surviving corporation board. The company disclosed that the selection of directors would follow both shareholder and Civil Aeronautics Board approval of the proposed merger.

Western said that the merger agreement provided Western's shareholders "downside protection" against a decline in American's stock, before the agreement was executed.

If American's stock, which closed Wednesday at 20 1/4, goes below 18 and Western maintains a cash position of \$42.5-million, American must offer enough added stock to raise the value of its per-share exchange to \$16. If American's stock falls below \$12, Western may call off the proposed transaction.

French Bar Acquisition By General Foods Corp.

The French Ministry of Finance has rejected a bid by the General Foods Corporation to acquire control of Société Orangina, a French soft-drink manufacturer. No reason for the rejection was given. General Foods filed the request last month with the ministry for permission to buy a majority interest in Orangina.

F.P.C. Backs Formation Of Iowa Energy Company

The Federal Power Commission has approved the plan of the Iowa Power and Light Company and the Iowa-Illinois Gas and Electric Company to merge into a new concern called the Iowa Energy Company. The F.P.C.'s decision confirmed a July 2 examiner's commendation.

World Service Life And Stockman National

Stockholders of World Service Life Insurance of Fort Worth, Tex., have approved the acquisition of the Stockman National Life Insurance Company of Rapid City, S. D. World Service already owns 1,18,832 shares of Stockman, 46.1 per cent of the 2,563,9 shares outstanding. Under the merger plan now pending World Service would acquire the remaining Stockman shares on the basis of one share its stock for each four shares of Stockman's.

Willamette Acquires Rest Of Western Kraft Affiliate

Willamette Industries, Inc. said it had completed acquisition of the remaining 19.8 per cent minority interest of Western Kraft Corporation affiliate for stock valued at \$20-million. Western Kraft operates five pulp and paper mills, corrugated-container plants and two Kraft grocery-bag plants.

GLEKEL EXHIBIT G

WALL STREET JOURNAL
December 28, 1970
Page 3, Column 4

Beck Agrees to Sell Some of Its Operations To Newly Formed Firm

Beck Would Shed Large Portion Of Shoe, Handbag Business; Buyer to Assume Part of Debt

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—Beck Industries Inc. said it had signed an agreement in principle with Frank T. Grassie, currently a vice president of U.S. Shoe Corp., whereby a new corporation to be controlled by Mr. Grassie would acquire a substantial portion of financially troubled Beck's present shoe and handbag operations.

Beck also said its major bank and institutional creditors had agreed to extend to June 30, 1971, the time for payment of principal and interest on Beck's present indebtedness to them, due Feb. 28.

The company said the extension would permit further progress on its financial and operating restructuring and the completion of documentation of the purchase by Mr. Grassie.

Beck also said the company's major bank creditors had agreed in principle to a seven-year extension of maturities of the indebtedness of Beck to them, the first specified payment on principle to be made in 1974 with provision for earlier payments if certain levels of income are achieved by Beck. Required covenants from the other banks are being sought, Beck said.

The acquisition of its shoe and handbag operations by the Grassie concern and the restructuring plan are subject to approval by Beck's directors, shareholders and the bank and institutional creditors.

Mr. Grassie, reached in Cincinnati, headquarters of U.S. Shoe Corp., said he would resign his posts as U.S. Shoe vice president and president of its retail development division on Jan. 1 to assume the management of his new properties. He said they will include A. S. Beck shoe stores, C. H. Baker shoe stores, two Pennsylvania shoe plants and Madison Handbag operations.

Mr. Grassie also said the purchase price would be the book value subject to certain adjustments of the acquired businesses.

The purchase price, Beck said, will be paid through the assumption by Mr. Grassie's cor-

poration on a long-term basis of the bank and institutional debt of Beck. As a result of that assumption, Beck said, it is expected that Beck's direct debt will be reduced by approximately \$10 million to \$12 million.

However, Beck said, it would guarantee a portion of the debt assumed by Mr. Grassie's corporation, which will be headquartered in Cincinnati.

Beck's financial difficulties became evident July 10, when it was disclosed that the company was unable to complete a proposed public offering of \$15 million of convertible subordinated debentures. Trading of the concern's shares on the American Stock Exchange has also been halted since that date.

Since then, the company's recently named chairman, Manuel F. Rothberg, and president, Herbert Engelhardt, have embarked on a retrenchment of the ambitious expansion program fostered by the company's previous management.

In the 39 weeks ended Oct. 31, the last period for which figures are available, the com-

130a

GLEKEL EXHIBIT G

NEW YORK TIMES
May 22, 1971
Page 46, Column 4

**Board of Beck Industries
Meets on Financial Woes**

Beck Industries, Inc., a diversified retailer of apparel and footwear, announced yesterday that its board met over the last two days and would meet again next week to consider various actions to deal with its "serious" financial difficulties.

The New York-based concern said among such courses of action was the possibility of resorting to a reorganization proceeding under Chapter X of the Bankruptcy Act. But Beck said that it was also continuing to negotiate with creditors and other parties.

WALL STREET JOURNAL
May 24, 1971
Page 4, Column 4

Beck Industries Board To Consider Chapter 10 Proceedings This Week

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—Beck Industries Inc.'s board will meet this week to discuss the possibility of resorting to a reorganization proceeding under Chapter 10 of the Bankruptcy Act.

The company is continuing its negotiations with creditors and other parties. Beck last traded on the American Stock Exchange in July 1970 at \$4.50.

A Beck spokesman said the board met Thursday and Friday to consider various courses of action in an attempt to deal with its serious financial difficulties.

Among its major creditors are Chase Manhattan Bank and Manufacturers Hanover Trust Co.

As of Oct. 31, Beck had a net loss of \$1.6 million from continuing operations before extraordinary items for the previous 39 weeks, compared with earnings of \$1.4 million in the year-earlier period. Sales for the period were \$126.3 million, against \$104 million in the similar period a year earlier.

In the past year, Beck has reshuffled its management and sold off some subsidiaries, rescinded the sale of one subsidiary and the purchase of a third in efforts to resolve its financial problems.

GLEKEL EXHIBIT H.

WALL STREET JOURNAL
May 28, 1971
Page 14, Column 1

Beck Industries Files Chapter 10 Petition

Two Attorneys Are Appointed
Trustees; \$45.5 Million Assets
Topped by \$58.8 Million Debts

By a WALL STREET JOURNAL Staff Reporter

NEW YORK—Beck Industries Inc. filed a petition for reorganization under Chapter 10 of the Federal Bankruptcy Act.

None of the nearly 70 subsidiaries of the holding company of apparel and shoe retailers and manufacturers will file, a spokesman said.

Federal Judge Sidney Sugarman has appointed J. Lincoln Morris and Leon Leighton, both attorneys, as trustees.

The petition for Chapter 10 showed the parent company had assets of \$45.5 million and liabilities of \$58.8 million. Creditors weren't listed in the petition.

Herbert Engelhardt, Beck president, said that after months of negotiations and intensive effort to resolve the company's financial difficulties, the company had concluded that the interests of its stockholders and creditors will be best served by utilizing the judicial procedures available under Chapter 10. There's no intention at present, he said, to have any subsidiary begin similar proceedings.

Trading of Beck's common stock on the American Stock Exchange has been halted since last July. It was disclosed then that Beck was unable to complete a proposed public offering of \$15 million of convertible subordinated debentures. When the stock was last traded, it was quoted at \$4.50 a share.

Among Beck's major subsidiaries are: Beck Shoe Stores Corp., C. H. Baker division; Denny Shoe division. Mid-Atlantic Footwear Corp., Salz Leathers Inc., Hartog of California, Seaman's Furniture Co., Susan Ives Stores Inc., W & J. Sloane of Beverly Hills Inc. (not associated with the W & J. Sloane division of City Stores Co.), Webster Clothes Inc., Beck-Joseph Inc., Carter's Discount Stores Inc. and Genarco Inc.

Since last July, the company has reshuffled its management, sold off some subsidiaries and rescinded the sale of one subsidiary and the purchase of another. Another subsidiary, H. Liebes & Co., was liquidated last fall.

Beck's last financial report was for the 39 weeks ended Oct. 31, 1970. It showed a net loss of \$1.4 million from continuing operations before extraordinary items, compared with year-earlier earnings of \$1.4 million. Sales were \$129.3 million, up from \$104 million a year before.

NEW YORK TIMES
May 28, 1971
Page 43, Column 6

Beck Files Action Under Chapter X; 2 Trustees Named

By ISADORE BARMASH

Beck Industries, Inc., the financially troubled operator of a diversified group of retail stores, filed a petition yesterday for financial reorganization under the Chapter X provisions of the Federal Bankruptcy Act. The New York-based concern listed assets of \$45,477,000 and liabilities of \$58,775,000.

Chief Judge Sidney Sugarman of the United States District Court, Southern District, granted Beck's petition yesterday and named two trustees to supervise the reorganization procedures. The trustees are Leon Leighton and J. Lincoln Morris, both New York lawyers.

In a statement issued yesterday morning, Herbert Engelhardt, Beck's president, said, "After months of negotiation and intensive effort to resolve the company's serious financial difficulties, the company has concluded that the interests of its stockholders and creditors will best be served by utilizing the judicial procedures available in Chapter X."

He added, "I wish to emphasize that only the parent corporation, Beck Industries, Inc., is taking this step and that there is no present intention to have any subsidiary commence any similar proceeding."

Beck, which operates the A. S. Beck shoe stores and other apparel stores, has had financial troubles for about a year. Early in 1970 a proposed offering of \$15-million of convertible debentures was canceled. Last July the company requested the American Stock Exchange to delist its stock pending a clarification of its financial position. The stock last traded at 4½.

In the 39 weeks ended Oct. 31, 1970, sales rose 22 per cent from the year-earlier level, but Beck had a loss of \$1,595,000 in contrast to a year-earlier profit of \$1,431,000 on continuing operations. And losses from discontinued operations widened the net loss to \$7,231,000 against net income the year before of \$2,460,000.

Source of Woes

In interviews last year, Beck's management said the company's troubles came from erratic retail sales and acquisitions that had failed to live up to expectations.

Yesterday's petition said the debts consisted mainly of notes payable to banks totaling \$24,487,000, accounts payable of \$2,714,000, accrued expenses and sundry liabilities of \$9,910,000 and long-term debt of \$20,873,000.

However, the petition stated that, since Jan. 30, the company had incurred operating losses of about \$1.5-million, including interest expense, and that the accumulated debt had increased by that amount.

Assets were listed as consisting primarily of inventory worth \$5,912,000; property, plant and equipment of \$1,712,000; and investments and advances to subsidiaries totaling \$33,743,000.

The Beck petition said that the concern was also contingently liable for leases, equipment rentals and obligations of its subsidiaries for a total of more than \$25-million.

On Dec. 24 Beck said that it had agreed to sell substantially its entire footwear store group, the A. S. Beck shoe stores, C. H. Baker shoe stores, two Pennsylvania plants and the Madison handbag operations, to a new company headed by Frank T. Grassie, an officer of the U. S. Shoe Corporation.

SOUTHERN DISTRICT OF NEW YORK

BRITTA DANIELS, as Trustee of the :
Testamentary Trust under the :
Will of HENRY DANIELS, deceased, :
and BRITTA DANIELS, individually,

Plaintiff,

- against -

ERNST and ERNST,

Defendants.

INDEX NO.:
iv. 1829 (MEF)

75Civ. 1829 (MEF)

Deposition of plaintiff, BRITTA

DANIELS, taken by defendants, pursuant to notice dated April 26, 1976, at the offices of Messrs. Davis, Polk & Wardwell, One Chase Manhattan Plaza, New York, New York 10005, on November 25, 1976, at 9:30 A.M., before Kathleen Russell, a Shorthand Reporter and Notary Public of the State of New York,

APPEARANCES:

Messrs. LIPSIG, NAPOLI, SULLIVAN, MOLLEN & LIAPAKIS,
Attorneys for plaintiff,
100 Church Street,
New York, New York 10007,
BY: SCOTT E. MOLLEN, ESQ.,

Of Counsel.

Messrs. DAVIS, POLK & WARDWELL,
Attorneys for defendants,
One Chase Manhattan Plaza,
New York, New York 10005,
BY: BARTLETT H. MCGUIRE, ESQ.,
JOEL B. GARDNER, ESQ.,

Of Counsel.

o0o

IT IS HEREBY STIPULATED AND AGREED,
by and between the attorneys for the respective
parties herein, that the sealing, filing and
certification of the within deposition be
waived; that such deposition may be signed and
sworn to before any officer authorized to
administer an oath, with the same force and
effect as if signed and sworn to before the
officer before whom said deposition is taken.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to form, are
reserved to the time of trial.

o0o

1
2 B R I T T A D A N I E L S, plaintiff, called as
3 a witness by the defendants, being first duly
4 sworn by the Notary Public (Kathleen Russell),
5 testified as follows:

6 EXAMINATION BY MR. McGUIRE:

7 Q Would you state your name and address, please?

8 A My name, Ulla Britta Ingeborg Daniels. I
9 live at 3930 Hollyline Avenue, Sherman Oaks, California.

10 Q What state is that in?

11 A California.

12 Q Is that Los Angeles?

13 A It is close to Beverly Hills, right over
14 the hill.

15 Q How long have you lived there?

16 A One year. A little over a year.

17 Q Prior to that time, did you live in
18 California?

19 A I lived in Beverly Hills.

20 Q For how long did you live in Beverly Hills
21 then?

22 A Since 1959, when I came to the United States.

23 Q Would you please describe your educational
24 background?

25 A First I went to private girls school, and

1
2 after that I went to the university and I became a
3 school teacher. And after that, I taught school in
4 Russia in the Swedish embassy. After that, I came here.

5 Q Did you take any advance degrees at the
6 university, or are you a graduate of the university?
7 What university?

8 A You mean in this country?

9 I have not had any -- I was an elementary
10 school teacher and that was it.

11 Q In terms of your education, was that in
12 Sweden?

13 A Yes.

14 Q What university did you attend?

15 A It's a school where -- they only -- you just
16 become teachers, it's just for teachers.

17 MR. MOLLEN: Did that school have a
18 name?

19 THE WITNESS: Harnosand. To say it
20 in English is nearly impossible, but Harnosand is
21 the town.

22 Q When you came to the United States, did you
23 work here, did you teach here?

24 A No, I didn't.

25 Q When did you marry Mr. Daniels?

1
2 A. I was married to him seven years. He died
3 1973. So, that was 1964.

4 MR. MOLLEN: Approximately '65 or '66?

5 THE WITNESS: Yes.

6 Q. When you married Mr. Daniels, you lived in
7 Beverly Hills; is that right?

8 A. Yes.

9 Q. Would you -- do you know where he was
10 educated?

11 A. He went to the Choate School, but outside of
12 New York. I know he was a classmate with Kennedy --
13 not a classmate, they had a room together.

14 Q. A roommate, or mate?

15 A. Yes, they were roommates.

16 Q. Did he go to college?

17 A. No, after that Louis B. Mayer found him in
18 the restaurant and put him under contract with Metro-
19 Goldwyn Mayer.

20 Q. What did he do with Metro-Goldwyn Mayer?

21 A. He was a big actor there. He starred in
22 quite a few pictures.

23 Q. Do you know when he first became involved
24 with the company that is called Hartogs?

25 A. Not exactly.

1

2

Q Do you know approximately?

3

A About 25, 30 years before he died.

4

Q Could you tell us what that company, or
those companies are? That is, or those companies are?

6

A No.

7

Q Do you know the nature of the business?

8

A Yes.

9

Q What is the nature of the business?

10

A He designed materials. He was a color
coordinator and he designed the patterns for the shirts,
and they made the shirts in his factory. The retailers
all over the country bought it from him, and he had
salesmen working for him.

15

Q Did he found the business, did he begin the
business?

16

17 A Yes.

18

Q Was he the sole stockholder of the business?

19

A Yes.

20

Q Where was the business located?

21

A Downtown Los Angeles, Los Angeles Street.

22

Q This is one manufacturing plant where the
shirts were made?

23

24 A Yes.

24

25 Q Were his offices there as well, at the plant?

1
2 A. Yes.

3 Q. What position did he hold in that business?
4 Was he the president of the business?

5 A. He was the president of the business.

6 Q. There are two corporations involved. One
7 is called Pomett Manufacturing Corporation.

8 A. Correct.

9 Q. One is called Swirts, Inc.

10 A. Correct.

11 MR. MCGUIRE: Mr. Mollen, are you
12 having difficulty understanding the questions?

13 MR. MOLLEN: No. I would also point
14 out, that kind of question is nothing but a cheap
15 lawyer's tactic to try to inhibit my client from
16 seeking advice from me here to advise her. That
17 kind of tactic I don't expect to be used by a
18 firm of this reputation, by being a professional
19 law firm. The fact is that I am here to advise
20 her and to answer any questions she may have as
21 to the phraseology of your questions. Particularly
22 the form of your questions has left a lot to be
23 desired, particularly the last two questions were
24 not phrased in question form but were statements,
25 and it wasn't clear whether you were asking her a

1
2 question or merely attempting to state facts.

3 We are happy to come here and listen to you state
4 facts, if that is what you would like to do. But
5 if you have questions, I wish you would ask them
6 in a proper question form.

7 MR. McGUIRE: Let me rephrase the
8 question then.

9 Q Was Mr. Daniels the sole stockholder of a
10 corporation called Pomett Manufacturing Corporation?

11 A Yes.

12 Q Was he the sole stockholder of a corporation
13 called Swirts, Inc.?

14 A Yes.

15 Q Do you know the difference between the
16 business conducted by those two corporations?

17 MR. MOLLEN: I don't understand what
18 you mean by the difference of the business.

19 Q Fine.

20 What business was conducted by Pomett
21 Manufacturing Corporation?

22 A I don't know.

23 Q What business was conducted by Swirts, Inc.?

24 A I don't know.

25 Q Did both of those corporations do business

1
2 under the name of Hartogs?

3 A. Yes.

4 Q. Was it Hartogs which engaged in the shirt
5 manufacturing business which you have described?

6 A. Yes.

7 Q. Were you ever involved in the business of
8 Hartogs?

9 A. Never.

10 Q. Were you an officer or director?

11 MR. MOLLEN: I would ask you to
12 clarify what you mean by "involved."

13 Q. Were you an officer or director of the
14 business?

15 A. No.

16 Q. Did you ever participate in the operations
17 of the business?

18 A. No.

19 Q. Other than Mr. Daniels, who were the
20 officers of the corporation?

21 A. I don't know.

22 Q. Are you acquainted with Mr. James J. Brown?

23 A. Yes.

24 Q. Is he a lawyer?

25 A. Yes.

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Q Did he represent Hartogs as a lawyer?

A Yes.

Q Was he a member of the board of directors
of Hartogs?

A I don't know.

Q Are you acquainted with a Mr. Leo Altschuler?

A Yes.

Q Is he a lawyer?

A Yes.

Q Is he a member of the board of directors
of Hartogs?

A I don't know.

Q Do you know whether either of those two men
are officers of Hartogs?

A I don't know.

Q Did they, as lawyers, represent either you
or Mr. Daniels --

MR. MOLLEN: Is there a time period?

Q From the time period 1968 through the present,
at the time during that time period?

A Mr. James Brown has represented my husband.
Mr. James Brown has also represented me.

Q During what time periods did he represent
your husband?

1
2 A. I don't know.

3 Q. Approximately. From 1968, through the time
4 of your husband's death.

5 A. He was representing my husband long before
6 I came to this country.

7 MR. MOLLEN: I assume by the term
8 "represent," you mean did some legal work for her.

9 MR. McGUIRE: Yes.

10 MR. MOLLEN: I don't know whether he
11 had other attorneys, for instance.

12 Q. He continued to represent your husband after
13 you came to this country, did he not?

14 A. Yes.

15 Q. Has he represented you personally or performed
16 legal services for you personally since your husband's
17 death?

18 A. Yes, the estate. He was the -- what do you
19 call it?

20 Q. Executor?

21 A. Executor,

22 Q. Are you the trustee of your husband's estate?

23 A. Yes.

24 MR. McGUIRE: Off the record.

25 (Discussion off the record.)

1
2
3 MR. MCGUIRE: Would you mark for
4 identification a 2-page letter from Maxwell M.
5 Perlberg to Mr. James Brown, dated June 19, 1969,
6 with six attachments.

7 (2-page letter from Maxwell M.
8 Perlberg to Mr. James Brown,
9 dated June 19, 1969, with six
10 attachments, marked Defendant's
11 Exhibit A for identification,
12 as of this date.)

13 BY MR. MCGUIRE:

14 Q I draw your attention, Mrs. Daniels, to
15 what has been marked as Page A-9. After looking at that
16 page, which purports to list the officers and directors
17 of Pomett and Swirts, is your recollection refreshed as
18 to whether or not Mr. Brown was an officer and director
19 of those corporations?

20 A No.

21 Q Is your recollection refreshed as to whether
22 Mr. Altschuler was an officer or director?

23 A No.

24 Q You don't know?

25 A No.

Q Do you know the nature of the work which
Mr. Daniels performed as president of Hartogs?

A He was the designer, he was the coordinator

1
2 of colors, he was the designer of the shirts, and he
3 also partly sold.

4 Q I'm sorry, I didn't understand you.

5 A He partly was a salesman. I mean, he had
6 salesmen working for him, but also at the big shows he
7 sold, himself.

8 Q Do you know who the accountants were for
9 the company?

10 A Yes.

11 Q Who?

12 A Clarence Rainess.

13 Q Did they also perform accounting work for
14 Mr. Daniels personally?

15 A Yes.

16 Q Did they also perform accounting work for
17 you personally, or have they ever done so?

18 A Yes.

19 Q Did they perform accounting work for Mr.
20 Daniels during the period 1969 through 1973?

21 A Yes.

22 Q Was Mr. Daniels employed with any other
23 business during the period 1969 through 1973?

24 A No.

25 Q Did Hartogs ever acquire any other companies

1
2 that you know about?

3 A. No.

4 Q Did there come a time when Mr. Daniels sold
5 his stock in Hartogs to a company called Beck Industries?

6 A Did you ask me if there came a time?

7 Q Yes.

8 A Yes.

9 Q When was that?

10 A 1969.

11 MR. MCGUIRE: Would you mark for
12 identification, as Defendant's Exhibit B, a
13 40-page document with a 7-page attachment. The
14 document is entitled "Agreement and Plan of
15 Reorganization."

16 (40-page document with a
17 7-page attachment, entitled
18 "Agreement and Plan of
19 Reorganization," marked
Defendant's Exhibit B for
identification, as of this
date.)

20 BY MR. MCGUIRE:

21 Q I show you Defendant's Exhibit B for
22 identification, and ask whether you can identify either
23 of the signatures on Page 40 of it?

24 A This looks like my husband's signature.
25 The other one I have heard about, but I don't know.

MR. MOLLEN: Let the record reflect Mrs. Daniels is pointing to the bottom of the two signatures, the one directly above the typed name "Henry Daniels."

Q Have you seen a copy of this exhibit before?

A Yes.

Q Did you see it, or a copy of it, at or about the time it was executed?

A No.

Q After Mr. Daniels sold his stock to Beck, did he continue to be employed with Hartogs?

A Yes.

Q In what position?

A As a president.

Q How long did he continue to be employed in that position?

A Until he died.

Q You said that he died in 1973. Do you remember the date?

A The 21st of September in 1973.

Q During the period from your marriage to Mr. Daniels until his death, was he ever a director or officer of any corporation other than Hartogs?

A No.

1
2 MR. MOLLEN: We are excluding Swirts
3 and Pomett, I assume.

4 MR. MCGUIRE: Right. When I refer to
5 Hartogs, I mean to include Swirts and Pomett.

6 Q Was Hartogs his sole source of income during
7 the time you were married to him?

8 A Yes.

9 Q Did he invest in the securities of any other
10 corporation?

11 A No.

12 Q Did you?

13 A No.

14 I have to take that back. He did do some
15 investments on the stock market.

16 MR. MOLLEN: Just for the record, so
17 it's clear, if the question is did he make other
18 investments, Mrs. Daniels, I believe, is trying
19 to state that he had a stock broker and he dabbled,
20 through the stock broker, occasionally in the
21 market. If the question is whether he had
22 investments in the sense of heavy investments of
23 acquiring control or substantial position of
24 other particular companies, then I think her
25 answer would be no.

MR. McGUIRE: All right.

BY MR. McGUIRE:

Q Did Mr. Daniels make investments through a broker?

A Yes.

Q During that period?

A Yes.

Q Who was the broker?

A Altschuler, Arthur Altschuler.

Q Is he a relative of --

A Yes.

Q Leo, is it?

A Yes.

Q Do you know the name of his brokerage firm?

A Bache & Company.

Q Bache & Company, B-a-c-h-e?

A Yes.

Q Did Mr. Altschuler advise Mr. Daniels on his investments?

A I don't know.

MR. MOLLEN: By the way, again just to clarify the record, I don't think you asked the question but I wouldn't want the record to be unclear. I believe Mrs. Daniels indicated

1
2 that Mr. Daniels at times may have used other
3 brokers.

4 Q Do you know whether Mr. Daniels used other
5 brokers during the period you were married to him?

6 A Yes.

7 Q Did he?

8 A Yes.

9 Q What other brokers?

10 A Dick Haft.

11 Q H-e-f-t?

12 A Yes, I think so.

13 Q Do you know what company Mr. Heft was
14 affiliated with?

15 A No, but I have it written down somewhere.

16 Q Could you supply us with that?

17 MR. MOLLEN: I believe it was Blair
18 Securities, and I also believe it may have been
19 "Haft," with an "a." I'm not sure.

20 MR. McGUIRE: Thank you.

21 Would you undertake to check the
22 record if in fact it was Blair Securities?

23 MR. MOLLEN: Of course.

24 MR. McGUIRE: Thank you.

25 BY MR. McGUIRE:

1
2 Q Did he deal with any other brokers that
3 you know of?

4 A No.

5 Q Did Mr. Haft advise Mr. Daniels on his
6 investments?

7 A I don't know.

8 Q Did you have any investments of your own
9 during the period when you were married to Mr. Daniels?

10 A No.

11 Q Do you know, generally, the magnitude of
12 his investments through these brokers?

13 A No.

14 Q Was it more than \$100,000?

15 MR. MOLLEN: Is there a particular
16 time period we are talking about? I don't know
17 if we are talking cumulatively on a given
18 transaction over a year.

19 Q At any given time, do you know whether his
20 investments through these brokers totalled more than
21 \$100,000?

22 A I know at sometime, yes.

23 Q Do you know whether it exceeded, at any
24 given time, \$500,000?

25 A I don't know.

1
2 Q Do you know when the negotiations for Mr.
3 Daniels to sell his stock to Beck began?

4 A No.

5 Q Did Mr. Daniels personally conduct the
6 negotiations?

7 A Yes.

8 MR. MOLLEN: When you say "conduct,"
9 I don't know what you mean.

10 Q Participate in.

11 A Yes.

12 Q Did Mr. Brown or Mr. Altschuler, Leo
13 Altschuler, also participate in the negotiations?

14 A You gave me two names.

15 Q Did Mr. Brown also participate in the
16 negotiations?

17 A Yes.

18 Q Did Mr. Altschuler, Leo Altschuler?

19 A I don't know.

20 Q Do you know whether prior to the acquisition
21 by Beck any other company had conducted discussions with
22 Mr. Daniels about the possibility of acquiring Hartogs?

23 A Yes.

24 Q Had any other company done so?

25 A Yes.

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Q What company or companies?

A I cannot recollect the names.

Q There was more than one?

A Yes.

Q Did Mr. Daniels attempt to sell his interest in Hartogs over a period of several years?

MR. MOLLEN: When you say "attempt to sell," the witness indicated other companies expressed an interest in purchasing it, There is not testimony that Mr. Daniels had wanted to sell his company.

MR. MCGUIRE: I'll be glad to withdraw the question and try another one.

Q Did the discussions with respect to the possible sale of Mr. Daniels' interest in Hartogs take place only in 1969, or did they take place over a period of years prior to that time?

A There had been companies during a period of times that wanted to buy him up.

Q Did Mr. Brown also participate in the discussions with any or all of those companies?

A I don't know.

Q Did Clarence Rainess participate in the discussions with representatives of Beck?

1

A. I don't know.

2

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5

Q. Do you know whether any other persons participated with, or on behalf of Mr. Daniels, in the discussions with Beck?

6

7

MR. MOLLEN: Does that include from Beck?

8

MR. MCGUIRE: No.

9

10

MR. MOLLEN: Does that include impartial mediators?

11

A. Does this include the finder of the --

12

Q. No, but I'll get to that.

13

A. Then I don't know about anybody.

14

15

Q. Was there a finder who brought the two parties together?

16

A. Yes.

17

Q. Who was the finder?

18

A. Dick Haft.

19

20

Q. The same man who was a broker for Mr. Daniels from time to time?

21

A. Yes.

22

23

Q. Do you know who participated in the negotiations on behalf of Beck?

24

25

A. Bob Fine was there, and he was the errand boy. He ran between New York and Los Angeles, negotiations

1
2 between them.

3 Q For whom was the errand boy, for whom at Beck?

4 A Charles McDevitt.

5 Q Did these negotiations take place in
6 California or in New York, or both?

7 A Both.

8 Q Did Mr. Daniels meet with Mr. McDevitt
9 personally during the negotiations?

10 A Yes.

11 Q And with Fine?

12 A Yes.

13 Q Do you know whether he met with anybody
14 else from Beck?

15 A I don't know.

16 Q Did you ever meet Mr. Fine?

17 A Yes.

18 Q Did you ever meet Mr. McDevitt?

19 A Yes.

20 Q Did you meet them both during the course
21 of these negotiations?

22 A No.

23 Q Did you meet them prior to the time that
24 the agreement was signed?

25 A No.

1

2

Q Did you meet them prior to the closing?

3

A No.

4

Q Did Beck approach Mr. Daniels or did Mr. Daniels approach Beck about acquiring the stock of Hartogs?

6

7

A Beck approached Mr. Daniels.

8

Q Do you know what they said to Mr. Daniels, in general?

9

10

A No.

11

Q Did Mr. McDevitt or Mr. Fine ever discuss Beck's business with you?

12

13

A No.

14

Q Did anyone else from Beck?

15

A No.

16

Q Did they discuss Beck's business with Mr. Daniels?

17

18

A Yes.

19

Q Do you know what they said about it?

20

A They said that Beck was a great company and they gave him the annual reports, and my husband was quite impressed, more impressed than with any other company that he had been in contact with.

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Q Roughly what time period are you talking about now?

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A. Before the agreements were signed.

Q. You said they said that Beck was a great company. Do you know of any more detail? Did they say Beck was in a sound financial condition?

A. Yes, in a very sound financial condition.

Q. Did they discuss Beck's plans for the future?

A. Yes.

Q. Do you know what they said, in general?

A. Well, they felt that by buying up my husband, they -- they wanted my husband to build up his business much bigger and acquire more -- you know, merge more companies into his company and he would get a percentage of that.

Q. Did they say that Beck would continue to acquire more companies?

A. Right.

Q. Did they say that Hartogs would continue as an independent company?

A. That I don't know.

Q. Did they say that they planned to raise additional money through public offerings?

A. No, not that I know of.

Q. Did anybody at Beck discuss with Mr. Daniels the value of Beck's stock?

1
2 A I only know that my husband said, from the
3 papers, that he felt -- you know, from the reports,
4 that he felt it was a great company. It could not do
5 anything but go up. He was assured about that.

6 MR. MOLLEN: You mean also in addition
7 to Mrs. Daniels statement, they told him it was
8 a very sound company and very solid company. She
9 already testified to that, so I assume your
10 question is in addition to that.

11 MR. McGUIRE: Would you read back
12 Mrs. Daniels last answer, please?

13 (Answer read)

14 Q He was assured of that by representatives
15 of Beck?

16 A Yes.

17 Q Did representatives of Beck say that Mr.
18 Daniels would continue to run the company, the company
19 being Hartogs?

20 A Yes. At least for five years.

21 Q Was an employment agreement entered into
22 with Mr. Daniels for a 5-year period?

23 A I have heard so.

24 Q Do you know what salary was specified in
25 that contract?

1
2 A. No, I don't.

3 Q. I direct your attention to Page 2 of the
4 exhibit to the Agreement and Plan of Reorganization,
5 at the very bottom, and ask if that refreshes your
6 recollection?

7 A. Yes, that sounds -- that is about the salary
8 he always used to have.

9 Q. \$72,000?

10 A. Yes, around that.

11 Q. Did he continue to receive his salary from
12 Hartogs until the time of his death?

13 A. Yes.

14 Q. Do you know whether the salary was either
15 increased or decreased?

16 A. I don't know.

17 Q. I believe you described Beck's plan for
18 expanding the Hartogs business.

19 MR. MOLLEN: I take exception to the
20 form. I don't think she described anything of
21 their plans for expansion. She stated that a
22 representative of Beck indicated that the company
23 was essentially a sound growth company, that they
24 were going to grow. That certainly can't be
25 described as a description of their plans.

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2 Q Did not representatives say that Hartogs
3 would be expanded, that it might acquire other companies
4 under Beck's management?

5 A It was their plan.

6 Q That was the plan, yes.

7 Did they say that money would be given to
8 Hartogs to help carry out this plan?

9 A I don't know.

10 Q Did representatives of Beck give Mr. Daniels
11 any written material about Beck, other than I believe
12 you mentioned annual reports?

13 A I don't know.

14 Q Do you have any such written material?

15 A No.

16 MR. MOLLEN: You mean apart from what
17 we have already furnished?

18 MR. MCGUIRE: Correct.

19 Q After the acquisition, did Mr. Daniels or
20 you receive annual reports of Beck?

21 A I don't know.

22 Q Do you know whether Mr. Daniels received
23 any proxy statements of Beck?

24 A I don't know.

25 Q Do you know of any other statements made

1
2 during the period of negotiations to Mr. Daniels by
3 Beck representatives?

4 A. I don't know.

5 Q. Do you know of any statements made during
6 the period of negotiations by Beck representatives to
7 anybody acting on behalf of Mr. Daniels?

8 A. I don't know.

9 Q. Do you know of any statements made by lawyers
10 for Beck during that period?

11 A. I don't know.

12 Q. Do you know of any statements made by
13 accountants for Beck during that period?

14 A. I don't know.

15 MR. MOLLEN: I assume you mean
16 statements by accountants, apart from the written
17 financial data which Mrs. Daniels testified was
18 supplied to her husband.

19 MR. McGUIRE: I think the record
20 stands for itself.

21 Q. Do you know when the financial statements
22 of Beck were supplied to Mr. Daniels or his representatives?

23 A. The first annual report was in the beginning,
24 when he started to negotiate with Beck.

25 Q. Approximately when was that, if you remember?

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2 A. Before Christmas, in June or July '69, the
3 contracts were written and he had started to negotiate
4 that Christmas before.

5 Q. That would be before Christmas?

6 A. '68 sometime.

7 Q. Was an agreement, in principle, reached
8 between Mr. Daniels and representatives of Beck at the
9 time prior to the written contract being entered into?

10 MR. MOLLEN: I don't know what
11 "agreement, in principle" means. Is that a
12 preliminary written agreement, is it an oral
13 agreement?

14 MR. McGUIRE: Withdrawn. Let me
15 rephrase it.

16 Q. Do you know of any agreement being reached
17 between Mr. Daniels and Beck, whether written or oral,
18 prior to their entering into the agreement which has
19 been marked as Defendant's Exhibit B?

20 A. No, I don't know.

21 Q. Do you know when the price for the sale of
22 stock was agreed upon?

23 MR. MOLLEN: What stock are we talking
24 about?

25 MR. McGUIRE: The sale of Mr. Daniels'

1
2 stock to Beck.

3 MR. MOLLEN: Since there are two
4 stocks involved, the evaluation of the Beck stock
5 or the evaluation of the Daniels stock?

6 MR. MCGUIRE: Let me get at it another
7 way.

8 Q What was the value of the Beck stock? What
9 was supposed to be the value of the Beck stock which
10 Mr. Daniels would receive?

11 MR. MOLLEN: Objection. There is no
12 foundation that she had any knowledge as to what
13 the value was.

14 Q Do you know what the value of the Beck
15 stock was supposed to be which Mr. Daniels was supposed
16 to receive?

17 A. No.

18 Q I draw your attention to Page 15 of Exhibit
19 B, and ask whether that refreshes your recollection.

20 MR. MOLLEN: Since the witness
21 already testified that she hasn't seen this
22 agreement prior to entering it, then I don't
23 understand what there is to be refreshed.

24 MR. MCGUIRE: She may have heard
25 one way or another as to the price which Mr.

1
2 Daniels was to be paid as to the value of Beck
3 stock. There is a recitation on Page 15 that the
4 value was to be \$4,200,000. I simply wondered
5 whether that recitation in any way refreshed her
6 recollection.

7 A. You know I saw this long afterwards, so I
8 have remembered this, but at the time I didn't know.

9 Q. At the time, did you have any idea as to
10 the value of stock which Mr. Daniels agreed to receive
11 for the sale of Hartogs?

12 A. He told me at the time.

13 Q. Do you remember whether he told you that
14 the figure was about \$4,200,000?

15 A. Something like that.

16 Q. Fine,

17 Do you remember when that figure was
18 agreed upon, formally or informally?

19 MR. MOLLEN: Since the witness
20 testified she didn't recall that figure, then
21 I am not sure she can testify when that figure
22 was agreed upon.

23 MR. McGUIRE: I would like her to
24 answer the question, if she can.

25 MR. MOLLEN: I direct the witness

1
2 not to answer. I am not going to allow her to
3 answer a question inherently misleading.

4 MR. MCGUIRE: Come on, Scott.

5 MR. MOLLEN: Phrase the question
6 properly. Ask the witness, do you remember --

7 Q Do you remember when a figure for the value
8 of Beck stock was agreed upon between Mr. Daniels and
9 representatives of Beck?

10 A I think right before the contracts were signed.

11 Q Fine, thank you.

12 Do you know whether Mr. Daniels received
13 any written material from Beck representatives subsequent
14 to the material which I believe you testified he
15 received at sometime prior to Christmas, 1968?

16 A I don't know.

17 MR. MOLLEN: Excuse me, I don't believe
18 the witness testified that he received that
19 material prior to December of 1968. The testimony
20 was clearly that he received it prior to the
21 signing of the agreement, which was, I believe,
22 in July of 1969. There was no time period set
23 when he received it.

24 MR. MCGUIRE: We can check the record
25 on what her testimony was.

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2 THE WITNESS: I did say that first,
3 yes, I did.

4 MR. MOLLEN: The first time.

5 THE WITNESS: Yes.

6 MR. McGUIRE: Thank you.

7 Q Do you know the number of shares of Beck
8 stock which Mr. Daniels received for the sales of Hartogs,
9 approximately.

10 A No, I don't. But he never got all of it.
11 He only got half of it and he never got the rest.

12 MR. McGUIRE: Would you please mark
13 as Defendant's Exhibit C a 3-page letter dated
14 December 9, 1969.

15 (3-page letter dated December
16 9, 1969, marked Defendant's
17 Exhibit C for identification,
as of this date.)

18 MR. MOLLEN: Could we indicate the
19 author and recipient?

20 MR. McGUIRE: From Weisman, Cellar,
21 Allan, Spett & Sheinberg.

22 BY MR. McGUIRE:

23 Q On Page 3 of Exhibit C, is the signature
24 over the printed words "Henry Daniels," that of your
25 husband's?

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2 A Yes.

3 MR. McGUIRE: Would you mark as
4 Defendant's Exhibit D for identification, a
5 one-page letter on the letterhead of Beck
6 Industries, Inc., to Mr. Daniels, dated October,
7 blank, 1969.

8 (One-page letter on the
9 letterhead of Beck Industries,
10 Inc., to Mr. Daniels, dated
11 October, blank, 1969, marked
Defendant's Exhibit D for
identification, as of this
date.)

12 BY MR. McGUIRE:

13 Q Is the signature at the bottom of the page,
14 over the typed name "Henry Daniels," that of your
15 husband's?

16 A Yes.

17 Q Did you participate at the closing when the
18 stock was purportedly transferred to Mr. Daniels pursuant
19 to this letter?

20 MR. MOLLEN: The witness already
21 testified she didn't participate in the
22 negotiations. I would assume closing comes
23 within negotiations.

24 Q Could you just answer the question?

25 A I wasn't there.

1
2 Q Do you know whether Mr. Daniels in fact
3 received 140,351 shares of Beck common stock at the
4 time of the closing?

5 MR. MOLLEN: Since the witness
6 testified she didn't know how many shares of
7 stock he was supposed to receive, how could she
8 testify whether he received that amount or not?

9 MR. MCGUIRE: I think she can answer
10 the question.

11 MR. MOLLEN: Objection, but you may
12 answer.

13 A. I don't know.

14 MR. MCGUIRE: Would you mark as
15 Defendant's Exhibit E, a one-page letter from
16 Beck Industries to a Mr. Modlin dated February
17 5, 1970.

18 (One-page letter from Beck
19 Industries to Mr. Modlin
20 dated February 5, 1970,
21 marked Defendant's Exhibit E
22 for identification, as of
23 this date.)

24 MR. MOLLEN: Is there a question?

25 Q Do you know whether Beck, subsequent to the
closing, ever sought to regain from Mr. Daniels any
stock in Beck which Mr. Daniels had received?

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A. You mean, take back?

Q. Yes.

A. No, I don't know.

Q. Do you own any shares of Beck stock today?

A. You mean do I have papers of the Beck stock?

Q. Yes.

A. Yes, half of it. The other half we never got.

Q. How many shares of Beck stock do you own?

A. Half of what was supposed to be.

MR. MOLLEN: The witness testified,
now twice, she didn't know the exact amount.

MR. McGUIRE: Could you supply to us
the amount of stock which plaintiff owns?

MR. MOLLEN: Yes.

MR. McGUIRE: Thank you.

Q. Do you own that stock individually?

A. It's in the trust for my son.

Q. Do you own any stock in Beck yourself, or
is it all in trust for your son?

A. I can utilize it as long as I am here,
meaning I am alive.

Q. Pursuant to the trust agreement; is that
correct?

A. Right.

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2 Q Have you ever sold any stock of Beck?

3 A How could I?

4 Q Has any of the stock which is subject to
5 the trust ever been sold?

6 A Do you mean Beck stock?

7 Q Yes.

8 A No.

9 Q Did Mr. Daniels ever sell any Beck stock?

10 A He couldn't.

11 Q So that the stock in the trust is all of
12 the stock which Mr. Daniels ultimately received from
13 Beck; is that correct?

14 A Correct.

15 MR. MOLLEN: Could we go off the record?

16 (Discussion off the record.)

17 BY MR. MCGUIRE:

18 Q During the period from 1968 to the present,
19 did you or Mr. Daniels subscribe to the Los Angeles Times?

20 MR. MOLLEN: Objection. I don't
21 understand --- number one, obviously Mr. Daniels
22 didn't subscribe to any newspaper after December
23 21, 1973, which is the time he passed away. I
24 don't understand the relevancy to this lawsuit
25 in asking whether Mrs. Daniels, after the term

1
2 of this period we are talking about, ever picked
3 up a newspaper.

4 MR. MCGUIRE: Will you let her answer
5 it subject to connection?

6 MR. MOLLEN: I will let her answer a
7 properly phrased question. I will direct her
8 not to answer because it's a compound question
9 that is not clear.

10 Q During the period from 1968 to the present,
11 have you ever subscribed to the Los Angeles Times?

12 MR. MOLLEN: By "subscribe," do you
13 mean ever purchase, or do you mean have an actual
14 subscription where they deliver it to your home?

15 Q Have a subscription where they deliver it.

16 A Yes.

17 Q Was that throughout the period from 1968
18 to the present?

19 MR. MOLLEN: If you remember.

20 Q If you remember.

21 A Yes.

22 Q Have you, throughout that period, regularly
23 read the Los Angeles Times?

24 A No, sir, sometimes I don't read it.

25 Q Did Mr. Daniels read it while he was alive?

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A. I don't know.

Q. Do you know whether Mr. Daniels read The Wall Street Journal?

A. I don't know.

Q. Do you know whether he read, during this period, The New York Times?

A. No, I don't know.

Q. Do you know whether he read Womens Wear Daily?

A. I don't know.

Q. Do you know whether he read Home Furnishings Daily?

A. I don't know.

Q. Do you know whether he read any financial publications, such as Forbes or Business Week, Fortune, Dun's Review, or anything of that kind?

A. I don't know. I am sure he did.

Q. Did you, from the period 1969 through July of 1970, from time to time check to see what price Beck stock was selling at?

A. No.

Q. Do you know whether Mr. Daniels did?

A. I don't know. My husband was a very ill man.

Q. Did you ever check to see what price Beck stock was selling at during that period?

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A. No.

Q. Do you know whether Mr. Daniels did?

A. I don't know. He was very sick. I doubt it.

Q. Did there come a time in approximately July of 1970, when Beck stock was suspended from trading on the American Stock Exchange, if you know?

MR. MOLLEN: Objection.

MR. MCGUIRE: On what ground?

MR. MOLLEN: I don't believe you have laid a foundation as to whether this witness is qualified or was in any position to determine when Beck trading was suspended. Obviously, you have proper sources to determine that. If you want to lay a foundation to show she was in a position to know, we'll be happy to answer the question.

Q. Did you hear that trading had been suspended in Beck stock at sometime around July of 1970?

A. Yes.

Q. Did you hear that at the time?

A. Yes.

Q. How did you hear it?

A. From my husband.

Q. Did he tell you what he understood to be

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the reasons for the suspension of trading?

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A. He only told me, "I was taken."

4

Q. He said nothing further than that you were taken?

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A. No, he said, "I really was taken."

7

Q. That you were taken?

8

A. No, that he was.

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Q. Did you discuss with him around that time the financial condition or what he understood the financial condition of Beck to be?

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A. Yes.

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Q. What did he say?

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A. We discussed it, and he felt they could not have been what the papers had showed to be.

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Q. Did he say that the financial condition of Beck had not been what had been represented to him?

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A. Correct.

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Q. This was approximately the time that Beck trading was suspended; is that correct?

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A. Correct.

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Q. Did he discuss with you any failure of Beck to be able to raise money in a public offering at about that time?

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A. No, he didn't discuss that with me.

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2 Q Were you aware at about that time that Beck
3 had been forced to withdraw a previously announced
4 public offering of securities?

5 A No, I was not.

6 Q Do you know whether Mr. Daniels was aware
7 of that?

8 A I don't know.

9 Q Were you aware that just prior to the
10 suspension of trading, Beck stock was selling for less
11 than \$5 a share?

12 MR. MOLLEN: The witness already
13 answered that she hasn't looked at the value of
14 the trading price of Beck at the time.

15 MR. MCGUIRE: This is a different
16 question. This is whether she was --

17 MR. MOLLEN: Is this an attempt to
18 probe her recollection?

19 MR. MCGUIRE: To probe her recollection,
20 and I think it's a different question. I asked
21 her if she was aware, even if she didn't check
22 the Beck prices.

23 MR. MOLLEN: From any other sources.

24 A I was aware from my husband, but there was
25 nothing we could do.

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Q. You were aware that the price had gone down to under \$5 a share?

A. Right before the announcement came out, when my husband told me it was suspended.

Q. Were you aware that the stock of Beck had sold for over \$40 a share the year before?

A. I was aware of that.

Q. Was Mr. Daniels?

A. I'm sure he was.

Q. Did you read newspaper articles in approximately July of 1970, which discussed this suspension of trading and which discussed Beck?

A. No.

Q. Do you know if Mr. Daniels did?

A. No.

Q. Did you hear that Beck filed a petition under Chapter 10 of the bankruptcy laws in approximately May of 1970?

MR. MOLLEN: I don't understand the question, objection to the form. I don't understand whether she was supposed to have heard in that month or whether it was filed in that month.

Q. Have you heard that Beck filed a petition

1
2 under Chapter 10 of the bankruptcy laws in approximately
3 May of 1970?

4 MR. MOLLEN: Same objection.

5 Q Have you heard at the time that that happened?

6 A Yes.

7 Q Did you hear it at approximately the time
8 that you understand the petition was filed?

9 A Probably.

10 Q Did your husband discuss this with you?

11 A Yes.

12 Q Do you remember what he said?

13 A Chapter 10, that is bankruptcy, and Chapter
14 11 is reorganization; isn't that right?

15 Q I believe that Chapter 10 is --

16 A That is when the bank went into bankruptcy.

17 Q It's part of the bankruptcy laws.

18 A Yes, he was very upset.

19 Q What did he say?

20 MR. MOLLEN: You mean apart from her
21 prior testimony. I thought she testified, "I was
22 taken."

23 Q That was a year before. I'm asking what
24 he said at or about the time the petition was filed.

25 A He said, "I'm through," because he couldn't

1
2 get any credit from any firm to go on with his business
3 because of Beck's reputation at that time.

4 Q Did he repeat that he was taken?

5 A Yes.

6 Q Did he repeat that Beck's financial condition,
7 or did he say Beck's financial condition had not been
8 as good as it had been represented to him in 1969?

9 A Yes.

10 Q Have you ever head of any lawsuits, other
11 than your own, being filed against Beck which allege
12 that the financial statements had been misrepresented
13 prior to the time of the bankruptcy?

14 A I heard the courts -- appointed lawyers of
15 the court were having a suit.

16 Q The trustee in bankruptcy, you mean?

17 A Yes.

18 Q Have you ever heard of any other lawsuits
19 making the kind of allegation you have described?

20 A Yes.

21 Q What other lawsuit or lawsuits have you
22 heard of?

23 A I don't know what kind of lawsuits.

24 Q Who brought them? Do you know who filed
25 the lawsuits?

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A. Sloane's.

Q. When was that filed, do you know?

A. I have no idea.

Q. Did you ever hear of a lawsuit filed by shareholders of a company called Salz Tenery?

A. No.

Q. Did you ever hear of a lawsuit filed by a man named Harold Ross?

A. No.

Q. Do you know whether your husband was aware of either of those lawsuits, of any lawsuit of that kind?

A. I know he wasn't aware of any lawsuits.

Q. In approximately August of 1970, did you learn that two of Beck's subsidiaries, one called Liebs and the other called The Peddlers, filed petitions under Chapter 11 in bankruptcy?

A. No.

Q. Do you know whether Mr. Daniels learned of that fact at some time around August of 1970?

MR. MOLLEN: I though she testified he didn't know.

Q. This is not a lawsuit, this is just petitions in bankruptcy by subsidiaries of Beck. Do you know whether he knew that?

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A. No.

Q During the period from 1969 until 1971, when Beck went into bankruptcy, did you ever discuss Beck's financial problems with Mr. Brown?

A. Never.

Q Do you know whether your husband did?

A. I don't know.

Q During that period, did you ever discuss Beck's financial problems with representatives of Bache or Mr. Holtz, is that the name?

A. Holtz?

Q The man from Blair.

MR. MOLLEN: Haft.

Q Do you know whether Mr. Daniels did?

A. No.

Q Did you, during that time period, discuss Beck's financial problems with anybody other than Mr. Daniels?

A. No.

Q Do you know whether he did?

A. I don't know.

Q I believe you have testified as to the lawsuit brought by shareholders of Sloane. Do you know any of the former shareholders of W.N.J. Sloane of Beverly

Hills?

MR. MOLLEN: Objection. I don't believe the witness testified she was aware of a lawsuit by shareholders of Sloane. The question was, I believe earlier, was she aware that there was some lawsuit with Sloane's. The witness I don't believe testified whether it was brought by shareholders, whether it was brought by any company itself.

MR. MCGUIRE: The record will stand for itself. The question is --

MR. MOLLEN: Rephrase the question. I direct her not to answer since you directed your question with a recitation as to what her testimony was.

Q The question was, without any preface, do you know any of the former shareholders of W.N.J. Sloane of Beverly Hills?

A I know Mr. Rothberg.

Q How long have you known Mr. Rothberg?

A He, for some time, was the president of Beck.

Q This is Manuel Rothberg?

A Right.

Q Did Mr. Daniels know Mr. Rothberg as well?

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A. He didn't know him well.

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Q. Did he know him?

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A. Yes.

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Q. Have you ever discussed with Mr. Rothberg, the financial condition of Beck at the time?

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A. Never.

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Q. Do you know whether Mr. Daniels did?

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A. No, I don't know.

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MR. MOLLEN: By the way, this is in the interest of clarifying the record, Mrs. Daniels called to my attention, in fact I'm not sure whether you phrased the question and whether the answer was clear, Mrs. Daniels informs me that while she knew there was a lawsuit relating to Sloane's, she only learned of that lawsuit subsequent to the filing of her own suit. I'm not sure. I don't remember whether your question specifically asked her what time she learned of that. If you would like to ask her, I assume you are interested in having a full record.

MR. MCGUIRE: I had no intention of asking her the question, but if you would like me to ask her, I will be glad to.

MR. MOLLEN: I don't know if she knows.

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2 Q Approximately when did you learn of this
3 lawsuit?

4 A Approximately about a year ago, I happened
5 to go in to buy some furniture.

6 MR. McGUIRE: Would you mark as
7 Defendant's Exhibit F, a one-page letter from Mr.
8 Modlin to Mr. Brown, dated June 26, 1969, with
9 an attachment which appears to be the 1968 Beck
10 Industries annual report.

11 (One-page letter from Mr.
12 Modlin to Mr. Brown, dated
13 June 26, 1969, with an
14 attachment which appears to
15 be the 1968 Beck Industries
annual report, marked
Defendant's Exhibit F for
identification, as of this
date.)

16 BY MR. McGUIRE:

17 Q Have you seen at any time before today that
18 letter?

19 A This letter?

20 Q Right.

21 A No.

22 MR. MOLLEN: Just to clarify the
23 record, I think Mrs. Daniels is interpreting your
24 question to mean "at the time." Mrs. Daniels saw
25 this letter and the report in my office. I showed

1
2 her the documents that have been involved in the
3 suit. If your question is did she see it at the
4 time, I think her answer would stand.

5 Q That wasn't my question, but other than in
6 your discussions with Mr. Mollen, have you ever seen
7 that letter before?

8 A No.

9 Q Had you ever seen the attachment to that
10 letter, the annual report, prior to your discussions
11 with Mr. Mollen?

12 MR. MOLLEN: This particular report?

13 Q Or a copy of it.

14 A No. It was color.

15 Q I'm sorry.

16 A It had color on it. It wasn't like that.

17 Q This is just a Xerox of it. Had you seen
18 an original of it with color prior to your discussions
19 with Mr. Mollen?

20 A I don't think so.

21 MR. MOLLEN: I think Mrs. Daniels
22 already testified that she saw Beck representatives
23 provide certain annual reports. I think Mrs.
24 Daniels' difficulty is that she can't be precise
25 as to this particular form of the report, was the

1
2 report that she saw. There is testimony that she
3 did see Beck annual reports provided by Beck
4 representatives to her. I don't know if that
5 clarifies it or not.

6 MR. McGUIRE: I'm not sure.

7 Q This annual report attached to Exhibit F
8 appears to include certain financial statements of Beck.
9 Do you know whether it was financial statements -- it
10 was these financial statements which Mr. Daniels told
11 you in 1970 and in 1971, were inaccurate?

12 MR. MOLLEN: If she testified she
13 wasn't sure this was the exact report, how can
14 she testify as to a part of that report?

15 MR. McGUIRE: She may have seen the
16 financial statement. She may be able to look at
17 the documents and see whether or not those are
18 what Mr. Daniels was referring to.

19 A I don't know.

20 Q Did he tell you during those conversations
21 which you have testified to, in 1970 and 1971 --

22 MR. MOLLEN: Who's "he"?

23 MR. McGUIRE: Mr. Daniels.

24 Q -- that Beck's financial statements were
25 false or inaccurate or misleading?

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2 MR. MOLLEN: Could you restate --
3 could we read back that question?

4 (Question read)

5 MR. MOLLEN: The witness already
6 testified that Mr. Daniels stated that the financial
7 condition of the company wasn't what they represented
8 it to be. Do you mean, did he use the precise
9 word "false," or did he use the precise word
10 "misleading," because obviously she already
11 testified he said the financial statements were
12 false and not accurate.

13 BY MR. MCGUIRE:

14 Q Is that correct, what Mr. Mollen has just
15 said, that Mr. Daniels told you that, at those times
16 that the financial statements were not correct?

17 A If he says he was taken, I assume that is
18 what he meant.

19 Q That the financial statements, which he
20 received prior to the agreement being signed, were
21 inaccurate?

22 A Yes.

23 MR. MOLLEN: She already testified.
24 This is the second or third time the witness
25 testified, the financial condition wasn't what

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2 it was represented. That is what her husband
3 said to her.

4 Q Did Mr. Daniels keep a diary during the
5 period 1968 through 1973, or any other period?

6 A No.

7 Q Did you?

8 A No.

9 Q Do you know whether Mr. Daniels maintained
10 any files on Beck Industries at the time, from 1969 until
11 the time of his death?

12 MR. MOLLEN: When you say whether
13 Daniels maintained files after the sale, any
14 files that Mr. Daniels would have had would have
15 been Beck files, since he was employed by Beck
16 after the sale.

17 Q Not necessarily.

18 Do you know whether he personally had any
19 files relating to Beck?

20 A I don't know.

21 Q Do you know whether he personally had any
22 files about the business of Hartogs during that period,
23 1969 through 1973?

24 A I don't know.

25 Q Have you ever received any letters or

documents of any kind from representatives of Beck?

A. Never.

Q. Have you ever received any letters or documents relating to Beck?

A. Never.

Q. Do you know whether Mr. Brown has?

A. I don't know.

Q. Do you know whether a check of Mr. Brown's files was made to see whether they included any documents relating to Beck or to this lawsuit?

A. I don't know.

Q. Have you ever seen a request for documents which was filed in this case? Have you made any efforts to find documents relating in any way to this case?

A. Yes, I have.

MR. MOLLEN: Counsel informed Mrs. Daniels of the substance of the document request, and directed that Mrs. Daniels conduct a search and immediately provide counsel with any documents that would pertain to the document request.

Q. Is that correct?

A. That is correct.

Q. When was that?

1
2 MR. MOLLEN: I believe that --

3 MR. McGUIRE: Could she answer the
4 question?

5 MR. MOLLEN: She can answer the
6 question. However, I think that the way you
7 phrased the question indicates that perhaps there
8 was one time. There's been a continuity of request
9 when, for instance --

10 Q When was the first time, if you remember?

11 A That I started to look -- the first time I
12 really tried to find some records was when I went to
13 the Lipsig office. I was trying to get something and
14 I was not able to because I thought maybe downtown they
15 would have something, but they couldn't find anything
16 for me.

17 Q You said --

18 A I mean downtown in the factory.

19 Q You said when you went to the Lipsig office.

20 A Here in New York.

21 Q When was that? This year, last year, the
22 year before?

23 MR. MOLLEN: We were consulted quite
24 awhile back as to the suit. She's been in our
25 office a number of times. More than once.

1
2 Q Do you remember when?

3 MR. MOLLEN: Could we go off the record?

4 (Discussion off the record.)

5 (Short recess)

6 BY MR. MCGUIRE:

7 Q Do you remember when you first looked for
8 documents which Ernst and Ernst had asked for pursuant
9 to its document request?

10 MR. MOLLEN: Let me tell you what I
11 believe, the problem is with the way the question
12 is phrased.

13 MR. MCGUIRE: Do you want to go off
14 the record?

15 MR. MOLLEN: We can do it on the
16 record. At the time, just prior to commencement
17 of this suit, counsel for Mrs. Daniels asked Mrs.
18 Daniels to conduct a search to provide counsel
19 with documents relating to the subject matter of
20 the action. At that time Mrs. Daniels conducted
21 a search. Subsequently a document request was
22 served by your firm to us which encompassed many
23 of those documents that we naturally would have
24 wanted prior to commencing the suit. Upon
25 receiving that document request, then our law

1
2 firm contacted Mrs. Daniels in California, indicated
3 to her that we had a document request from your
4 firm and asked her to see if she could conduct a
5 search and come up with any documents specified
6 within the document request.

7 Now, the first time, --

8 MR. MCGUIRE: May I stop you there?

9 Q When was that when you remember, Mrs. Daniels?

10 A I don't know, because I went to Sweden for
11 a long time.

12 MR. MOLLEN: I can tell you it was
13 before --

14 MR. MCGUIRE: I would like Mrs.
15 Daniels to answer, if she could.

16 A I really don't know.

17 Q Was it last spring, was it this summer, was
18 it this fall?

19 A I really don't know when they asked me for
20 the documents the first time.

21 Q When did you go to Sweden this year?

22 A Last year.

23 Q I'm sorry, last year.

24 A Yes.

25 Q You haven't been in Sweden in 1976; is that

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correct?

A. No, I have not.

Q When this year?

Let me try once again. Do you remember any --

A. I have asked my accountants to get me papers
and they are looking for papers.

Q When did you ask them, this fall?

A. I have asked many times about the papers,
and they are a very big accounting firm and they have
ten thousand things to do.

MR. MOLLEN: I might add, since I
assume counsel is interested in obtaining the
answer to counsel's question, that we spoke with
Mrs. Daniels just before the summer, just before
July, and asked her again. That was the first
time counsel asked her in connection with the
specific document request. Counsel spoke with
her again after the summer and asked her.

Q Is that correct, Mrs. Daniels?

A. That is correct.

Q Fine, thank you.

Whom did you ask for documents? You said
your accountants. Did you ask Mr. Brown?

A. I have asked Mr. Brown, but he doesn't have

1
2 any.

3 MR. MOLLEN: I might add that counsel
4 has spoken with Mr. Brown. In fact, documents
5 which have been marked today as Defendant's Exhibit
6 F, I believe were furnished by Mr. Brown in
7 response to counsel's request. I believe
8 Defendant's Exhibit number B was furnished by
9 Mr. Brown in response to counsel's request. I
10 believe also Defendant's Exhibit number D.

11 I might add that this particular
12 lawsuit was being handled by an attorney of my
13 firm who's no longer with us. Certain material
14 in the file may have existed when Mrs. Daniels --
15 as of the time Mrs. Daniels retained him. Mr.
16 Brown has been contacted by our office, and then,
17 I believe, did forward these exhibits.

18 MR. MCGUIRE: Mr. Mollen, did I
19 understand that there may have been documents
20 which Mrs. Daniels turned over to your firm
21 which no longer exist?

22 MR. MOLLEN: I'm sorry.

23 MR. MCGUIRE: Could you read my
24 question back?

25 (Question read)

1
2 MR. MOLLEN: You may have understood
3 that, but that is not what was said.

4 MR. MCGUIRE: That is not the case
5 then.

6 MR. MOLLEN: Absolutely not.

7 BY MR. MCGUIRE:

8 Q Mrs. Daniels, when were you first told that
9 you would have to testify in this case pursuant to our
10 notice of deposition?

11 MR. MOLLEN: Objection. It's privileged
12 conversations through my client and I as to
13 preparation in connection with a lawsuit, which
14 you well know.

15 MR. MCGUIRE: Do you instruct the
16 witness not to answer?

17 MR. MOLLEN: Absolutely.

18 MR. MCGUIRE: I have no further questions.

19 (Time noted: 11:50 A.M.)
20

21 _____
22 Subscribed and sworn to before me

23 this _____ day of _____ 1976.
24
25 _____

C E R T I F I C A T E

STATE OF NEW YORK)
: ss
COUNTY OF NEW YORK)

I, KATHLEEN RUSSELL, a Shorthand
Reporter and Notary Public within and for the
State of New York, do hereby certify:

That BRITTA DANIELS, the witness
whose deposition is hereinbefore set forth, was
duly sworn by me and that such deposition is a
true record of the testimony given by such witness.

I further certify that I am not
related to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 2nd day of December 1976.

Kathleen Russell
KATHLEEN RUSSELL

November 24, 1976

197a

64

I N D E X

WITNESSES

DEFENDANT'S

EXAMINATION BY : PAGE

Britta Daniels

Mr. McGuire

3

EXHIBITS

DEFENDANT'S

FOR IDENT.

A	2-page letter from Maxwell M. Perlberg to Mr. James Brown, dated June 19, 1969, with six attachments,	12
B	40-page document with a 7-page attachment, entitled "Agreement and Plan of Reorganization,"	14
C	3-page letter dated December 9, 1969, from Weisman, Cellar, Allan, Spett & Sheinberg,	34
D	One-page letter on the letterhead of Beck Industries, Inc. to Mr. Daniels, dated October, blank, 1969,	35
E	One-page letter from Beck Industries to Mr. Modlin, dated February 5, 1970,	36
F	One-page letter from Mr. Modlin to Mr. Brown, dated June 26, 1969, with an attachment which appears to be the 1968 Beck Industries annual report.	51

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DEFENDANTS' EXHIBIT A FOR IDENTIFICATION.

Clarence Raines & Co.
CERTIFIED PUBLIC ACCOUNTANTS

EX. NO.

DATE

A-1 10
11-24-76

KR

Mr. James Brown
Brown & Altshuler
9301 Wilshire Blvd.
Beverly Hills, California

Dear Jim:

In accordance with the requirements of the agreement and plan of reorganization between Henry Daniels and Beck Industries, Inc., we are submitting the following schedules as of March 31, 1969:

A. Schedule of Property Assets - Owned or Leased

In connection with this schedule, a detailed list of specific property assets is not available and would require the taking of a physical inventory by management. Therefore, we are submitting to you the acquisitions by year as reflected by the books and records. The property assets, however, are all owned by the corporation and are reflected in Schedules 1, 2, 3, and 4 with leased items in Schedule 5.

- B.
- (1) - Schedule of Furniture and Fixtures - Reserve for Depreciation and Book Value - Schedule 1
 - (2) - Schedule of Automobiles - Reserve for Depreciation and Book Value - Schedule 2
 - (3) - Schedule of Machinery and Equipment - Reserve for Depreciation and Book Value - Schedule 3
 - (4) - Schedule of Leasehold Improvements and Reserve for Amortization - Schedule 4
 - (5) - Schedule of Accounts, Notes and Other Receivables

BEST COPY AVAILABLE

DEFENDANTS' EXHIBIT A FOR IDENTIFICATION

Clarence Ruess & Co.

CERTIFIED PUBLIC ACCOUNTANTS

Mr. James Brown
Page 2

C. Schedule of Accounts, Notes and Other Receivables.

POMETT MFG. CO.

<u>Description</u>	<u>Uncollected Amount</u>	<u>Current and Collectible</u>
Due from United Factors Accounts Receivable -	\$382,636	\$382,636
Net	1,945	1,945
Advances to Employee	5,314	5,314

SWIRTS

Due from United Factors	\$158,004	\$158,004
Accounts Receivable	438	438
Advances to Contractors	4,200	4,200

D. List of composition of the inventories (All located in Los Angeles).

POMETT MFG. CO.

<u>Description</u>	<u>Amount</u>
Piece Goods	\$111,835
Trimming	5,000
Work in Process	35,860
Finished Goods	50,773
Total	\$203,468

SWIRTS

Finished Goods	\$ 50,344
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E. Other schedules submitted -
Insurance Register - Schedule 6

Very truly yours,

Max

Maxwell M. Perlberg

MMP/ds

Beverly Hills, California
June 19, 1969

DEFENDANTS' EXHIBIT A FOR IDENTIFICATION
POMETT MFG. CO.

SCHEDULE 3

SCHEDULE OF MACHINERY AND EQUIPMENT -
RESERVE FOR DEPRECIATION AND BOOK VALUE
FROM INCEPTION TO MARCH 31, 1969

<u>Cost</u>	<u>Life</u>	<u>Method</u>	<u>Reserve For Depreciation To 3/31/69</u>	<u>Book Value 3/31/69</u>
\$ 11,332.87	-	-	\$ 11,332.87	\$ -
341.40	10 Years	S.L.	287.40	54.00
624.00	10	S.L.	483.60	140.40
338.00	6	S.L.	338.00	-
741.43	10	S.L.	549.87	191.56
390.00	10	S.L.	265.79	124.21
261.15	10	S.L.	170.47	90.68
374.40	10	S.L.	211.78	162.62
576.00	10	S.L.	325.81	250.19
238.00	10	S.L.	132.76	105.24
239.00	10	S.L.	133.34	105.66
296.40	10	S.L.	140.79	155.61
145.81	10	S.L.	64.39	81.42
343.20	10	D.B.-200%	228.71	114.49
770.64	10	D.B.-200%	505.40	265.24
690.55	10	D.B.-200%	325.93	364.62
267.50	10	S.L.	5.54	261.96
<u>\$ 17,970.35</u>			<u>\$ 15,502.45</u>	<u>\$ 2,467.90</u>

201a

DEFENDANTS' EXHIBIT A FOR IDENTIFICATION

Acquisition
Date

9/60
10/60
7/61
8/61
10/61
2/62
7/62
6/63
6/63
7/63
7/63
2/64
10/64
4/65
5/65
4/67
11/68

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DEFENDANTS' EXHIBIT A FOR IDENTIFICATION
POMETT MFG. CO.

SCHEDULE 5

SCHEDULE OF LEASED EQUIPMENT

AT MARCH 31, 1969

<u>Equipment</u>	<u>Term</u>	<u>Quarterly Rental</u>
Ticket-o-Graph (Friden) #842-10652	Quarterly (Renewing)	\$ 104.74
2 Superlock Sewing Machines compl. with motor Head #51082:#43381 Motor #80253054:#M1659161	Quarterly (Renewing)	95.40

203a

DEFENDANTS' EXHIBIT A FOR IDENTIFICATION

Lessor

Singer Co.

Kennedy Sewing Mach.

204a

DEFENDANTS' EXHIBIT A FOR IDENTIFICATION
POMETT MFG. CO.

SCHEDULE OF LEASEHOLD IMPROVEMENTS AND

RESERVE FOR AMORTIZATION

FROM INCEPTION TO MARCH 31, 1969

<u>Acquisition Date</u>		<u>Cost.</u>	<u>Reserve For Amortization To 3/31/69</u>	<u>Book Value 3/31/69</u>
11/62	- 714 So. Los Angeles St.	\$ 14,777.93	\$ 14,777.93	\$ -
8/64	- Showroom - Cal Mart Bldg.	<u>9,387.27</u>	<u>9,387.27</u>	<u>-</u>
		<u>\$ 24,165.20</u>	<u>\$ 24,165.20</u>	<u>\$ -</u>

DEFENDANTS' EXHIBIT A FOR IDENTIFICATION

SCHEDULE I

POMETT MFG. CO.

authorized: 750 shares at \$100.00 par value

outstanding: 75 shares in the name of Henry H. Daniels, Jr.
certificate #8 dated September 1, 1960

SWIRTS, INC.

authorized: 750 shares at \$100.00 par value

outstanding: 5 shares in the name of Henry H. Daniels, Jr.
certifidate #2 dated November 2, 1960

SCHEDULE II

none.

SCHEDULE IV

none.

SCHEDULE V

HARTOG OF CALIFORNIA
HARTOGS

SCHEDULE VI

1. Lease dated 8-31-62 between Hartog of California and Hartogs, Inc., as Lessee, and First Berkeley Corporation as Lessor, covering premises at 714 South Los Angeles Street, Los Angeles, California (3rd floor). Monthly rental \$1,450.00 per month. Term of four (4) years from 6-1-63. Renewed pursuant to option for three (3) years from 6-1-67. No further options.
2. Lease dated 5-1-67 between Pomett Mfg. Co., as Lessee, and California Mart, as Lessor, covering premises at 110 E. 9th Street, Los Angeles, California (Rm. 515). Monthly rental \$695.00 per month. Term of three (3) years from 8-1-67. No options.
3. Agreement of May 18, 1966, between Pomett Mfg. Co. and Swirts, Inc. on the one hand, and United Factors Div. of United Merchants and Manufacturers, Inc. on the other.
4. Union Contract between Hartog of California and The Southern California Joint Board of the Amalgamated Clothing Workers of America as evidenced by Supplemental and Extension Agreement dated as of September 1, 1966. Expires on 60 days notice given at any time after 7-1-69.

DEFENDANTS' EXHIBIT A FOR IDENTIFICATION
SCHEDULE VII

Pomett Mfg. Co.

Directors

Henry H. Daniels, Jr.
James J. Brown
Leo Altshuler

Officers

Henry H. Daniels, Jr. - Pres.
James J. Brown - Vice-Pres.
Irving Friedensohn - Sec'y.
Leo Altshuler - Treas.

Swirts, Inc.

Directors

Henry H. Daniels, Jr.
James J. Brown
Leo Altshuler

Officers

Henry H. Daniels, Jr. - Pres.
James J. Brown - Vice-Pres.
Irving Friedensohn - Sec'y.
Leo Altshuler - Treas.

Union Bank

Henry H. Daniels, Jr. acting alone, or
Bernard Books and Josephine Evenstein, acting jointly
no tax or other powers of attorney outstanding

SCHEDULE VIII

see Schedule III

SCHEDULE IX

	<u>BASE</u>	<u>BONUS</u>	<u>TOTAL</u>
1. Henry H. Daniels, Jr.	\$38,000.00	\$30,400.00	\$68,400.00
2. Bernard Brooks	23,700.00	6,000.00	29,700.00
3. Josephine Evenstein	9,075.00	1,000.00	10,075.00
4. Sidney Orlikoff	9,025.00	1,200.00	10,225.00
5. Gabriel Steinberg	11,265.00	1,500.00	12,765.00
<u>commission men</u>			
6. Irving Friedensohn		\$84,786.00	
7. A. G. Larry Smith		16,197.00	
8. Leonard Wiviott		20,603.00	

207a

POMET

INSURAN

MARCH

DEFENDANTS' EXHIBIT A FOR IDENTIFICATION

<u>Policy No.</u>	<u>Company</u>	<u>Cove</u>
IB 4342922	American Insurance Co.	Stock and equipment 714 S. Los Angeles S 110 E. 9th Street Art Knit (Reduced fr (2/1/ - 9/1/) to Other locations not In transit - public In transit - Vehicle by in
F 4418654	American Insurance Co.	Business Interruption 50% of gross earnings
F 1109792	U. S. Fidelity & Guaranty	" " "
1993714	Hartford Steam Boiler	Steam Boiler, broad incl. piping
M4914454	American Insurance Co.	Parcel Post - open f monthly reports
65P1155267	Associated Indemnity	Workmen's Compensation officers (President
L-1421527	American Insurance Co.	Comp. Liab. and auto Public Liability Property Damage Incl. comp. fire Collision Medical Coverage at: 714 110 General property dan

DEFENDANTS' EXHIBIT A FOR IDENTIFICATION *A 11*

<u>Amount</u>	<u>Term</u>	<u>Premium</u>
\$350 M	3/15/67 - 3/15/70	\$2,310.00 Annual Premium
22 M		
40 M		
25 M		
10 M		
2 M		
\$50.00		
250 M	9/8/66 - 9/8/69	170.00 Annual Premium
300 M	3/15/67 - 3/15/70	204.00 Annual Premium
50 M	9/20/68 - 9/20/69	288.00 Annual Premium
\$500.00	Until Cancelled	50.00 Deposit
	9/1/68 - 9/1/69	1,000.00 Deposit
100/300 M	12/23/68 - 12/23/69	773.00 Annual Premium
100 M		
100 Ded.		
5M		
		1,573.00 Annual Premium

DEFENDANTS' EXHIBIT A FOR IDENTIFICATION
 SCHEDULE OF FURNITURE AND FIXTURES -

RESERVE FOR DEPRECIATION AND BOOK VALUE

FROM INCEPTION TO MARCH 31, 1969

<u>Cost</u>	<u>Life</u>	<u>Method</u>	<u>Reserve For Depreciation To 3/31/69</u>	<u>Book Value 3/31/69</u>
\$ 2,980.04	-	-	\$ 2,980.04	\$ -
516.88	10 Years	S.L.	478.12	38.76
1,979.07	5	S.L.	1,979.07	-
429.94	5	S.L.	429.94	-
413.40	5	S.L.	413.40	-
381.28	10	S.L.	270.59	110.69
644.10	10	S.L.	461.60	182.50
582.40	10	S.L.	365.07	217.33
5,931.15	10	S.L.	4,071.51	1,859.64
1,838.42	10	S.L.	827.28	1,011.14
348.30	10	S.L.	34.79	313.51
<u>\$ 16,044.98</u>			<u>\$ 12,311.41</u>	<u>\$ 3,733.57</u>

210a

DEFENDANTS' EXHIBIT A FOR IDENTIFICATION

Acquisition
Date

Various

12/59

9/60

10/61

10/61

1/62

1/62

11/62

11/62

9/62

3/68

211a

POMETT MFG. CO.

DEFENDANTS' EXHIBIT A FOR IDENTIFICATION
SCHEDULE OF AUTOMOBILES -

RESERVE FOR DEPRECIATION AND BOOK VALUE

FROM INCEPTION TO MARCH 31, 1969

<u>Cost</u>	<u>Life</u>	<u>Method</u>	<u>Reserve For Depreciation To 3/31/69</u>	<u>Book Value 3/31/69</u>
<u>\$ 8,243.37</u>	47 Months	S.L.	<u>\$ 438.47</u>	<u>\$ 7,804.90</u>

212a

DEFENDANTS' EXHIBIT A FOR IDENTIFICATION

Acquisition
Date

1/14/69 - 1969 Cadillac El Dorado
#H957356

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION.

~~18~~ AGREEMENT AND PLAN OF REORGANIZATION made this day of July, 1969 between HENRY DANIELS, residing at 540 Haynes, Trousdale Estates, Beverly Hills, California, party of the first part (sometimes hereinafter referred to as the "Seller"), and BECK INDUSTRIES, INC., a Delaware corporation with offices at 25 West 43rd Street, New York, New York 10036, party of the second part (sometimes hereinafter referred to as "Beck").

RECITALS

A. The Seller is the owner of all of the issued and outstanding shares of capital stock of POMETT MFG. CORP., a California corporation, and SWIRTS, INC., a California corporation (hereinafter such corporations are each individually referred to as "Corporation" and collectively referred to as "Corporations").

B. Beck desires hereby to acquire all of Seller's shares of capital stock of each Corporation, and the Seller desires hereby to transfer all of his shares of capital stock of each Corporation to Beck for the shares of voting common stock of Beck in the number and upon the terms and conditions hereinafter more particularly set forth.

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

AGREEMENTS

I. Representations and Warranties of Seller

Seller covenants, represents and warrants to Beck as follows:

1.01. Organization and Standing of Corporations.

Each Corporation is a corporation duly organized, validly existing and in good standing under the laws of the State of California and is duly qualified, licensed or domesticated and in good standing to do business in each other jurisdiction in which the character of the properties owned or the nature of the activities conducted makes such qualification, licensing or domestication necessary. The copy of each Corporation's certificate of incorporation, as amended to date, and of its by-laws, as amended to date, which have been initialed by Seller and delivered to Beck upon the execution and delivery hereof, are complete and correct as at the date of this Agreement (herein sometimes referred to as the "Agreement Date") and will not be changed on or before the Closing without the approval of Beck in writing.

1.02. Subsidiaries of Corporations. None of the Corporations have any subsidiaries.

*Amended
to
Beck*

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

1.03. Capitalization. Schedule I sets forth the entire authorized capital stock and the number of shares of such capital stock issued and outstanding with respect to each Corporation. All of such issued shares of capital stock have been validly issued and are fully paid and non-assessable. No Corporation has any outstanding warrants, options, subscriptions or other rights calling for the purchase of any of its shares of capital stock.

1.04. Ownership of Stock. Seller is now and will on the Closing be the sole and absolute owner of the number of shares of capital stock of each of the Corporations set forth next to his name in Schedule I, which shares constitute all of the issued and outstanding shares of capital stock of each Corporation on the date hereof and on the Closing. All of said shares of capital stock are now and will be, on the Closing, free and clear of all liens, encumbrances or restrictions on the sale thereof, and by the transfer of said shares to Beck pursuant to this Agreement, Beck will thereby become the owner and holder of all of the issued and outstanding shares of capital stock of each Corporation, free of all liens, encumbrances and restrictions.

Assumed
to
Beck

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

1.05. Financial Conditions and Liabilities.

Seller has initialed and delivered to Beck, upon the execution and delivery hereof, financial statements of each of the Corporations consisting of balance sheets as at October 31, 1968 and October 31, 1967, and income statements for the periods indicated. Such financial statements are certified by Clarence Rainess & Co. Seller has also initialed and delivered to Beck, upon the execution and delivery hereof, the following additional interim financial statements of each of the Corporations consisting of a balance sheet at March 31, 1969 and income statement for the periods then ended. The balance sheets are correct and complete, and present fairly the financial position of each Corporation on the dates indicated, and such income statements are correct and complete, and present fairly the results of operations of each Corporation for the periods indicated. Such financial statements have been prepared in accordance with generally accepted accounting practices and principles applied on a consistent basis, except that no provision may have been made for vacation pay, state franchise taxes and/or county property taxes, which items for which no provision has been made will not in the aggregate exceed \$15,000 for Corporations.

Assumed
to
Beck

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

The inventories of the Corporations reflected on the March 31, 1969 balance sheets delivered hereunder, and the inventories as the same will exist on the Closing, are and will be on the Closing, good and merchantable and of a quality and quantity usable and salable at list prices in the current seasons in the ordinary course of business except that as to items of inventory of below-standard quality or merchantability, if any, the same have been written down to realizable market value, or adequate reserves provided therefor. The values at which such inventories are carried are at no higher than the lower of net invoiced cost to the Corporations or net realizable market price. No value has been attributed on said balance sheets to any inventory on hand with either Corporation for more than 12 months preceding the respective dates of said balance sheets, except for some inventory of Corporations, having an aggregate value of no more than \$25,000 (valued at the lower of cost or market), which inventory is currently salable at no less than the value attributed thereto on such balance sheets. The accounts receivable reflected on such balance sheets resulted from bona fide sales of goods by the Corporations prior to the dates of such balance sheets, and such accounts receivable

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

and all other receivables reflected on said balance sheets are good and collectible at the aggregate recorded amounts thereof and are not subject to counterclaim or offset.

Except to the extent reflected or reserved against or described in the Corporations' balance sheets at March 31, 1969, or disclosed in this Agreement or the exhibits and schedules hereto, each Corporation had, as of such date, no liabilities or obligations of any nature, whether accrued, absolute, contingent or otherwise, including, without limitation, tax liabilities due or to become due, whether or not assessed or determined, for any taxable periods ending on or before March 31, 1969; provided, however, that it shall not be a breach of this warranty if such liabilities do not exceed \$10,000 (other than liabilities for uncollected accounts receivable) in the aggregate. Since March 31, 1969, there has been no adverse change in the financial condition, business or properties of any Corporation and the business of each Corporation has been operated profitably. The basis for federal income tax purposes of all depreciable assets set forth on the balance sheets of the Corporations at March 31, 1969 does not materially vary from the amounts at which such assets are shown by such balance sheets.

*Answer
to
Buh.*

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

No consent of a kind authorized by Section 341(f) of the Internal Revenue Code of 1954 has been filed by or on behalf of any Corporation.

All tax returns and reports of the Corporations required by federal law or the law of any jurisdiction have been duly filed, and all taxes, assessments, fees and other governmental charges upon the Corporations (other than those payable for current periods without interest or penalty) upon, or measured by, any of the properties, franchises, income or receipts of the Corporations, which are due and payable, have been paid. The federal income tax returns of each of the Corporations have been audited by the Internal Revenue Service as set forth in Schedule 2, and no deficiencies have been proposed as a result of such audits which have not been paid.

1.06. Location of Assets. Schedule 3 hereto contains a listing of (a) all realty, machinery and equipment which, as of the date of this Agreement, is owned by or leased to each Corporation; (b) the book value, book and tax reserves for depreciation and net book value of any such realty, machinery and equipment and depreciation policy with respect to each thereof,

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DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

and, with respect to all leases, a short description thereof, including terms, expiration date, rental and renewal and purchase privileges, if any; (c) a schedule of accounts, notes and other receivables of each Corporation which accurately sets forth the face amount of each such receivable, the balance uncollected thereon and whether the same is current or delinquent and, if delinquent, the extent of such delinquency and a description of the collateral, if any, securing each such receivable; and (d) a list of the composition of the inventories of each Corporation as at March 31, 1969, the principal locations thereof and the aggregate values thereof at which such inventories are carried on the books of the Corporations.

1.07. Litigation. Except as described in Schedule 4 hereto, there are no actions, suits, proceedings or investigations pending or, to the knowledge of the Seller, threatened against any Corporation by any person, group, union or governmental department, board or agency, and no Corporation is subject to or in default under any order, decree or judgment of any court or governmental body.

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

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1.08. Title to Properties. Each Corporation has good and marketable title to and owns outright and absolutely all of its properties and assets, real and personal, including all of the assets and properties shown by Schedule 3 hereto and by the balance sheets of said Corporations dated March 31, 1969 as being owned by it, subject to no liens, mortgages, pledges, leases, easements, conditional sales agreements, security interests or other encumbrances, charges, liabilities or claims of any nature or kind whatsoever, except as noted in such balance sheets or disclosed in Schedule 3. Except for the minor exceptions set forth in Schedule 3, all properties and assets owned or used by each Corporation in its business are in good condition, reasonable wear and tear excepted, and conform with all applicable ordinances and regulations. The buildings owned or leased by each Corporation and the use and occupancy thereof comply in all material respects with all applicable zoning and municipal ordinances, and no Corporation is in violation of any applicable building code or regulation.

1.09. Patents, Trademarks, Trade Names, Copyrights and Licenses. No Corporation is a party to any contract for the sale or purchase of any patent, patent

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

application, patent rights, patent licenses, or trademarks, nor is any Corporation a party to any royalty or license agreements. Schedule 5 attached hereto contains a list of all trademarks and trade names of the Corporations, all of which names have been duly and properly registered under all applicable fictitious name statutes. No Corporation is using, in any aspect of its business, any patents, trademarks, trade names, copyrights, service marks, or service names in any manner except as set forth in Schedule 5.

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1.10. Performance of Contracts. Each Corporation has performed all obligations required to be performed by it, and is not in default under any contract, lease or other document to which any of them is a party or to which any of their assets are subject, and Seller knows of no event which, with the passage of time or the giving of notice, or both, would constitute a default under any thereof.

1.11. Contracts. Except as described in Schedule 6 hereto attached, or as described in this Agreement or in any of the other schedules or exhibits hereto, no Corporation is a party to any written or oral (a) contract for the

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

employment of any officer or individual or any pension, profit-sharing, bonus, retirement, stock option or similar incentive or deferred compensation plan or arrangement in effect with its officers, employees or others, other than those, if any, that are terminable at will without liability to the Corporation; (b) contract for the acquisition of real estate or fixed or other assets in an aggregate amount exceeding \$5,000; (c) financial arrangement involving the mortgaging, pledging or other hypothecation of assets or involving a borrowing which may not be repaid in part or in full on not more than thirty (30) days' notice with refund of unearned or unamortized discount and without premium or penalty; (d) contract with any labor union; (e) contracts, commitments or other arrangements continuing for more than three (3) months or providing for the future purchase of materials or supplies; (f) contracts for the performance of work, labor and services; (g) sales agency, management or other similar contracts having an unexpired term of more than, or alternatively not subject to termination without penalty by each Corporation within a period of, thirty (30) days; (h) contract with any governmental authority, contractor or commission agent; (i) any contract, arrangement or understanding under which any Corporation had assumed,

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DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

guaranteed, endorsed or otherwise become liable in connection with the obligation of any person, firm or corporation; (j) contract with Seller, his family, affiliates and associates (as such terms are defined in the regulations of the Securities and Exchange Commission promulgated pursuant to the Securities Act of 1933); or (k) any contract not included in any of the foregoing which is material and was not made in the ordinary and usual course of business of each Corporation as conducted at the Agreement Date.

1.12. Directors and Officers, Banks, Powers of Attorney. Schedule 7 annexed hereto is a true and complete list showing (a) the names of all officers and directors of each Corporation; (b) the name and address of each bank in which each Corporation has an account or safe deposit box and the names of all persons authorized to draw thereon or to have access thereto and the nature of such authorization; and (c) the names of all persons holding tax or other powers of attorney from any Corporation and a summary statement of the terms thereof.

1.13. Insurance. Schedule 8 annexed hereto is a true and complete list of all insurance policies of the Corporations, including, with respect to each (a) the

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

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name of the insurance carrier; (b) a general description of the risks insured against; (c) the annual premium; (d) the effective date of the policy and the term thereof; and (e) the amount of coverage, which, in the case of casualty insurance, shall not be less than 80% of the insurable value of the assets covered. The insurance coverage of each Corporation is, and will be for a period of at least thirty (30) days after the Closing, adequate for all normal risks incident to the Corporation's business. All such policies are in full force and effect and no Corporation is in default under any of them.

1.14. Employee Relations. Except as set forth in Schedule 6, no Corporation is a party to any collective bargaining agreement. There have been no strikes, lock-outs, or other work stoppages, picketing or labor disputes in which any Corporation or any of their premises were involved, and no event has transpired which has had or will have a material adverse effect on the relationship between the Corporation and its employees. Annexed hereto, as Schedule 9, is a true and complete list setting forth the name and the current annual salary and other compensation or the rate of compensation payable by each Corporation to each director, officer, employee

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

and salesman thereof whose current total annual compensation or estimated compensation from such Corporation is \$10,000 or more, and the profit sharing, bonus or other form of extra compensation paid or payable by each Corporation to or for the benefit of each such person for its respective current fiscal year. There are no oral or written contracts, agreements or arrangements obligating any Corporation to increase the compensation or benefits paid or payable to any of their respective employees now or at any future time.

Answer to
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1.15. Transactions Since March 31, 1969. No Corporation has, since March 31, 1969, (a) issued or agreed to issue any stock, bonds, or other corporate securities, including securities convertible into stock; (b) declared or made any payment, dividend or distribution to stockholders or purchased or redeemed any shares of its capital stock; (c) mortgaged, pledged or subjected to lien, charge or any other encumbrance any of its assets, tangible or intangible, except as required by any existing contracts or agreements described in this Agreement or in any of the schedules or exhibits hereto; (d) suffered any damage or loss, whether or not covered by insurance, materially affecting its property or business;

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

(e) sold or transferred any of its assets except in the ordinary and usual course of its business as conducted at March 31, 1969 or except as required by any existing contracts or agreements described in this Agreement or in any of the schedules or exhibits hereto; (f) paid to any officer, employee or any other person any extra compensation or bonus, or made any arrangement or commitment therefor, or increased the salary or other compensation of any officer or other executive employee, except as set forth in Schedule 7 attached hereto; (g) sold, assigned or transferred any patent, trademark, trade name, copyright or other intangible asset; or (h) incurred any material obligations or liabilities, absolute or contingent, except in the ordinary and usual course of business or pursuant to existing contracts and agreements described in this Agreement or in any of the schedules or exhibits hereto.

Answer to Bach

1.16. Right to Sell, Corporate Authority, Corporate Records. This Agreement is a valid and binding obligation of Seller enforceable in accordance with its terms. There are no provisions of the certificate of incorporation or by-laws of any Corporation, or of any agreements to which Seller is a party or to which any Corporation is a party, which prohibit, limit or otherwise affect the right,

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

powers and authority of Seller to execute this Agreement or to consummate the transactions contemplated hereby. Each Corporation has all requisite corporate power and authority to own and operate its properties and to carry on each and every phase of its business. All minute books and stockholder records of each Corporation are complete, and properly reflect all corporate meetings and actions and all transactions involving the stock of such Corporation.

1.17. Events Subsequent to Agreement Date. Seller will promptly advise Beck of the occurrence of any events which come to the knowledge of Seller after the Agreement Date and prior to the Closing on the Closing Date relating to any of those matters which are the subject of the covenants, representations and warranties of Seller contained in Sections 1.01 to 1.16, inclusive.

1.18. General. No representation or warranty by Seller in this Agreement, nor in any statement furnished or to be furnished to Beck pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

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fact or omits or will omit to state a material fact necessary to make the statements contained therein not misleading. Seller has herein disclosed to Beck all facts material to the assets, prospects and business of each Corporation.

The warranties, representations and covenants of Seller contained in this Agreement shall be true and correct in all respects as of the Closing with the same force and effect as if given and made on and as of the date and time of Closing, and such representations, warranties and covenants shall survive the Closing and the consummation of the transactions contemplated by this Agreement notwithstanding any investigation or examination made for or on behalf of Beck or the acceptance by Beck of any certificate or opinion furnished in connection with or at the Closing. Seller shall indemnify and hold harmless Beck and each Corporation against any loss, damage or expense (including legal and other fees) incurred or sustained by Beck or any Corporation as a result of or attributable to any misrepresentation or breach of any covenant, warranty or representation given or made by Seller and against any loss, damage or expense including

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

✓ legal or other fees) which would not have been incurred or sustained by Beck or any Corporation if such covenants, representations and warranties had been true and correct.

II. Representations and Warranties of Beck

Beck represents and warrants to Seller as follows:

2.01. Beck is a corporation duly organized, existing and in good standing under the laws of Delaware, and is duly authorized under its certificate of incorporation, as amended, to own the properties and conduct the business now owned and conducted by it, and all shares of Common Stock of Beck deliverable to Seller hereunder shall be, when delivered as herein required, validly issued, fully paid and non-assessable.

III. Access and Information

3.01. Seller shall give or cause to be given to Beck and to Beck's counsel, accountants, engineers and other representatives, full access during normal business hours throughout the period prior to the Closing to all of each Corporation's properties, books, contracts, commitments and records, and shall furnish Beck during such period with all such information concerning each Corporation's affairs as Beck reasonably may request, it being

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DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

distinctly understood and agreed, however, that such investigations as may be made by Beck in accordance herewith or otherwise shall not be deemed in any way in derogation or limitation of the covenants, representations and warranties made by Seller in this contract, and that the consummation of this contract by Beck shall be conclusively deemed to have been in reliance upon the covenants, representations and warranties made in this Agreement by Seller.

Assign to Beck

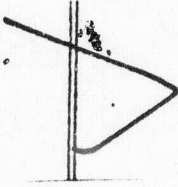
IV. Exchange of Stock

4.01. The Seller agrees to assign, set over, transfer and deliver to Beck at the Closing, certificates for the number of shares of capital stock of each Corporation set forth next to his name in Schedule I, which shares of capital stock constitute all of the issued and outstanding capital stock of the Corporations. Certificates for the aforesaid shares shall be delivered to Beck duly endorsed for transfer to Beck with signatures appropriately guaranteed and with all federal and state stock transfer tax stamps affixed thereto and cancelled.

4.02. In exchange for the transfer and delivery to it of certificates for the shares of capital stock of the Corporations, as hereinabove set forth,

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

and in full consideration therefor, Beck, subject to all of the terms and conditions of this Agreement, will issue and deliver to Seller at the times set forth below, the following:



(a) At the Closing -- such number of shares of common stock of Beck valued at the Closing Value, as hereinafter defined, as shall equal \$4,200,000.

(b) On February 15, 1970 -- such number of shares of common stock of Beck valued at the Closing Value as shall equal twelve times the excess, if any, of the Combined After Tax Net Income of Corporations, as hereinafter defined, for the twelve months ended October 31, 1969, over \$350,000.

(c) On February 15, 1971 -- such number of shares of Common Stock of Beck, valued at the average closing prices of such stock on the American Stock Exchange during the 5 trading days ended October 31, 1970, as shall equal three times the Excess Earnings, if any, as hereinafter defined, of Corporations for the twelve months ended October 31, 1970.

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

(d) On February 15, 1972 -- such number of shares of Common Stock of Beck, valued at the average closing prices of such stock on the American Stock Exchange during the 5 trading days ending October 31, 1971, as shall equal three times the Excess Earnings, if any, as hereinafter defined, of Corporations for the twelve months ended October 31, 1971.

(e) On February 15, 1973 -- such number of shares of Common Stock of Beck, valued at the average closing prices of such stock on the American Stock Exchange during the 5 trading days ending October 31, 1972, as shall equal three times the Excess Earnings, if any, as hereinafter defined, of Corporations for the twelve months ended October 31, 1972.

(f) In the event that during the 18 month period commencing 18 months after the Closing and ending three years after the Closing ("Cutoff Date"), (i) a Piggyback Notice, as hereinafter defined, has not been given; or (ii) if one or more Piggyback Notices have been given, (A) and on the effective date(s)

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

of all of the Registration Statement(s) ("Registration Date") with respect to which such Piggyback Notice(s) relates there was a Price Deficiency as hereinafter defined and none of Seller's shares of Beck Common Stock were included in the Registration Statement(s) with respect to which such Piggyback Notice(s) relates or, (B) there was no Price Deficiency on one or more of the Registration Dates of the Registration Statements with respect to which such Piggyback Notices relate and the underwriters in all such offerings with respect to which such Piggyback Notices related advised Beck that the inclusion of the Adjusted Closing Shares which are then owned by Seller would materially interfere with the public offering of the shares covered by such Registration Statements and none of Seller's Adjusted Closing Shares were included in any such Registration Statements with respect to which such Piggyback Notice(s) related, then ten (10) days after the Cutoff Date, Beck shall deliver to Seller such number of Shares of Common Stock of Beck valued at the average

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

closing prices of such stock on the American Stock Exchange during the five trading days immediately preceding the Cutoff Date as shall equal the Share Value Deficiency on the Cutoff Date, multiplied by the Adjusted Closing Shares which are still owned by the Seller on the Cutoff Date, if any, minus the excess, if any, of (A) the gross proceeds received by Seller from sales of shares of Common Stock of Beck prior to the Cutoff Date over (B) the number of shares of Common Stock of Beck sold by Seller prior to the Cutoff Date, multiplied by the average closing prices of such stock on the American Stock Exchange during the five trading days immediately preceding the Closing. In the event there is no Share Value Deficiency on the Cutoff Date, then no shares shall be delivered pursuant to this subparagraph 4.02(f).

(g) Notwithstanding any of the foregoing clauses of this Agreement, not more than two times the lesser of (i) the number of Shares of Beck Common Stock delivered pursuant to subparagraph 4.02(a) or (ii) the number of Adjusted

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

Closing Shares (after appropriate and equitable adjustment in the amount and nature of shares of Common Stock of Beck after the Closing to take into account any and all stock dividends, stock splits or changes in the character or amount of outstanding shares of Common Stock of Beck resulting from recapitalizations, mergers, consolidations or reorganizations), shall be issued to Seller under this Agreement.

4.03. Redelivery of Shares. In the event the Combined After Tax Net Income of Corporations for the twelve months ended October 31, 1969 is less than \$350,000, the Seller shall redeliver to Beck on February 15, 1970, such number of shares of Common Stock of Beck valued at the Closing Value which were delivered to Seller at the Closing pursuant to Section 4.02(a) as shall equal twelve times that amount by which the Combined After Tax Net Income of Corporations for the twelve months ended October 31, 1969 is less than \$350,000. Such shares of Common Stock of Beck shall be redelivered by Seller to Beck duly endorsed for transfer to Beck with all transfer tax stamps affixed thereto, together with all dividends and distributions paid, payable or received thereon between the Closing and the date of such redelivery.

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

As used herein the term "Adjusted Closing Shares" shall be deemed to mean the number of shares of Beck Common Stock delivered to Seller pursuant to Section 4.02(a) plus the number of shares of Beck Common Stock delivered to Seller pursuant to Section 4.02(b), if any, minus the number of shares of Beck Common Stock redelivered by Seller to Beck pursuant to this Section 4.03, if any.

4.04. Closing Value. The term "Closing Value" shall mean the sum of (i) the average closing price per share of Beck Common Stock on the American Stock Exchange during the 5 trading days immediately preceding the date of this Agreement; and (ii) \$5.00.

4.05. For the purposes of making the computations in this Article IV, if the Common Stock of Beck is not traded on the American Stock Exchange on any day during an applicable period, then the mean between the reported bid and asked prices on such day shall be used in lieu of the closing price for such day. The term "American Stock Exchange" shall be deemed to refer to the American Stock Exchange in New York except that if the Common Stock of Beck is listed on another Exchange, the term shall be deemed to refer to the primary securities exchange registered

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

pursuant to Section 6 of the Securities Exchange Act of 1934 on which the Common Stock of Beck is then listed for trading.

4.06. Piggyback Notice. The term "Piggyback Notice" shall mean the written notice given by Beck under Section 5.02 hereof advising the Seller of the commencement of preparation of a Registration Statement by Beck under the Securities Act of 1933.

4.07. Listing. Beck shall, from time to time, apply for the listing, upon official notice of issuance, of any shares of Common Stock of Beck required to be delivered to Seller hereunder.

4.08. Excess Earnings. The term "Excess Earnings" for any twelve months shall be the excess, if any, of the Combined After Tax Net Income of Corporations, as hereinafter defined, for such twelve months over the Combined After Tax Net Income of Corporations for the twelve months ended October 31, 1969.

4.09. The value of any Shares of Beck Common Stock to be issued pursuant to subparagraphs (c), (d) or (e) of subsection 4.02, if any, shall be deemed to include a payment of unpaid principal and 4% simple interest thereon computed from the Date of Closing to the date(s) of delivery of such Shares.

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

4.10. Combined After Tax Net Income of Corporations. The term "Combined After Tax Net Income of Corporations" for any twelve month period shall be determined in accordance with generally accepted accounting principles, as follows:

(a) The gross revenues and other proper income credits shall be computed in accordance with generally accepted accounting principles, provided that there shall be excluded: (i) any gain arising from sales of capital assets or from the acquisition or retirement or sale of securities; (ii) any restoration to income of any contingency reserve, except to the extent that provision for such reserve was made out of income accrued during such period; (iii) any net gain arising from the collection of the proceeds of any life insurance policy; and (iv) any write-up of any asset;

(b) From the amount of such gross revenues and other proper income credits, determined as provided in the foregoing subsection (a), there shall be deducted an amount equal to the aggregate of all expenses and other proper

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

income charges, determined in accordance with generally accepted accounting principles, but in any event including (without limitation): (i) all interest and rental charges; (ii) all amortization of all other deferred charges properly subject to amortization; (iii) provision for all taxes in respect of property, income and all other taxes; (iv) provision for all employees' profit-sharing and retirement plans; (v) provision for all contingency reserves, whether general or special; (vi) provision for depreciation, obsolescence and/or amortization (including depreciation and amortization of leasehold improvements) in amounts in the aggregate not less than those actually deducted on the books of such business entity (and if not actually deducted on such books, then at not less than the rates, and in not less than the amounts, which would be deducted in accordance with the practice last employed), and in not less than the amounts claimed or to be claimed by such business entity for income tax purposes for such period (subject to adjustment in respect of any part of such amounts so claimed but not allowed).

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

The Combined After Tax Net Income of Corporations for the twelve month periods ended October 31, 1970, 1971 and 1972 shall be determined by Ernst and Ernst, independent public accountants, or their successors or assigns, whose determination thereof shall be final and binding upon Seller, unless within thirty (30) days after delivery of the statement of such accounting firm setting forth said determination, Seller, by written notice to Beck, disputes such statement and sets forth the particulars of such dispute. If any such notice is given with respect to any of such statements, Beck shall cause any one of Messrs. Touche Ross Baily & Smart or Peat Marwick Mitchell & Co. to review the disputed part of the statement and, after such review, to issue within ninety (90) days of the date of Seller's notice, a review statement which shall be final, conclusive and binding. The cost of any such review statement shall be shared equally by Seller and Beck. A Corporation may change its fiscal year and, in the event of such change, appropriate adjustment shall be made by such independent public accountants in the calculation of the Combined After

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

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Tax Net Income of Corporations. No representations or warranty is being made by Beck as to the Combined After Tax Net Income of Corporations or as to the amount thereof, if any. It is further understood that no representation or warranty is being made hereunder as to the efforts which will be made by Beck or Corporations after the date hereof. While it is Beck's present intention to maintain and operate the businesses of Corporations on a successful basis, Beck shall not be liable to Seller with respect to any action relative to the operation of any of the Corporations which is taken or which is not taken by any of the Corporations after the date hereof or for the discontinuance of the business of any of the Corporations or any part thereof, it being understood and agreed that they may be operated in any manner that their respective boards of directors determine in their sole, arbitrary and unlimited discretion.

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

The statement of the Combined After Tax Net Income of Corporations for the 12 months ended October 31, 1969 shall initially be prepared by Clarence Rainess & Co. in accordance with the provisions of this Section 4.10 and at Seller's sole cost and expense. Beck shall have the right to have Ernst and Ernst review the statement prepared by Clarence Rainess & Co. and to issue a review statement which shall be final, conclusive and binding, unless within thirty (30) days after delivery of the review statement of such accounting firm setting forth said determination, Seller, by written notice to Beck, disputes such statement and sets forth the particulars of such dispute. If any such notice is given with respect to such review statement, Beck shall cause any one of Messrs. Touche Ross Baily & Smart or Peat Marwick Mitchell & Co. to review the disputed part of the statement and, after such review, to issue within ninety (90) days of the date of Seller's notice, an additional review statement which shall be final, conclusive and binding. The cost of such additional review statement shall be shared equally by Seller and Beck.

4.11. Share Value Deficiency. The term "Share Value Deficiency" on the Cutoff Date shall mean the extent to which the value on such date of a Share of Common Stock of Beck is less than the average closing price of

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

such stock on the American Stock Exchange during the five trading days immediately preceding the date of this Agreement (after appropriate and equitable adjustment in the amount and nature of Shares of Common Stock of Beck after the Closing to take into account any and all stock dividends, stock splits or changes in the character or amount of outstanding Shares of Common Stock of Beck resulting from recapitalizations, mergers, consolidations or reorganizations). To the extent the value of a Share of Common Stock of Beck on the Cutoff Date equals the average closing price of such stock on the American Stock Exchange during the five trading days immediately preceding the date of this Agreement (as the same may be adjusted as above provided), then there is no Share Value Deficiency for such date. For purposes of this Section 4.11, the value of a Share of Common Stock of Beck on the Cutoff Date, shall be valued at the average closing prices of such stock on the American Stock Exchange during the five trading days immediately preceding such date.

4.12. Fractional Shares. In determining the number of Shares to be issued and delivered pursuant to this Agreement, fractions which are less than one-half ($1/2$) shall be disregarded and fractions which are one-half ($1/2$) or greater shall be considered to be one whole Share.

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

4.13. Price Deficiency. The term "Price Deficiency" on any Registration Date shall mean the extent to which the value on such date of a Share of Common Stock of Beck is less than the sum of: (i) \$2.50 and (ii) the average closing price of such stock on the American Stock Exchange during the 5 trading days immediately preceding the date of this Agreement (after appropriate and equitable adjustment in the amount and nature of shares of Common Stock of Beck after the Closing to take into account any and all stock dividends, stock splits or changes in the character or amount of outstanding shares of Common Stock of Beck resulting from recapitalizations, mergers, consolidations or reorganizations). To the extent the value of a Share of Common Stock of Beck on any Registration Date equals or exceeds the sum of \$2.50 plus the average closing price of such Stock on the American Stock Exchange during the 5 trading days immediately preceding the date of this Agreement (as the same may be adjusted as above provided), then there is no Price Deficiency on such date. For purposes of this Section 4.13, the value of a Share of Common Stock of Beck on any Registration Date shall mean the initial public offering price as set forth in the Registration Statement which becomes effective on such Registration Date.

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

V. Investment.

5.01. Seller warrants, represents and agrees that the shares of Common Stock of Beck to be issued to him pursuant to this Agreement are being acquired by him for his own account and interest for investment and not with a view to distribution; that it is his present intention to continue to hold such shares for investment; and that he will not sell any of said shares (a) in the absence of an effective registration statement under the Securities Act of 1933 covering the shares which he proposes to sell; or (b) unless the availability of an exemption from registration for the shares which he proposes to sell is established to the satisfaction of counsel for Beck.

Seller agrees to confirm the agreement, warranty and representations set forth in this Section 5.01 above, by a writing appropriately subscribed by Seller, to be delivered at the time of the delivery of the shares of Common Stock of Beck hereunder.

The certificates for the shares of Common Stock of Beck to be issued and delivered to Seller pursuant to Article IV hereof shall bear the following notation:

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

"The shares of Common Stock of Beck Industries, Inc. represented by this certificate were issued for investment and not with a view to distribution and may not be sold (a) in the absence of an effective registration statement under the Securities Act of 1933 covering such shares; or (b) unless an exemption from registration under the Securities Act of 1933 is established to the satisfaction of counsel for Beck Industries, Inc."

5.02. Piggyback. If at any time during the period commencing February 16, 1970 and ending on the Cutoff Date, Beck commences the preparation of a Registration Statement under the Securities Act of 1933 (hereinafter called the "Act"), covering any shares of Common Stock of Beck to be sold by it or any of its stockholders Beck will, promptly after the commencement of preparation of such Registration Statement, give written notice thereof by certified or registered mail, return receipt requested, to Seller. Seller may, at any time within ten (10) days after such notice, advise Beck, by certified or registered mail, return receipt requested, of the number of Adjusted Closing Shares which are then owned by Seller, which Seller wishes to include in such Registration Statement. If such advice is received by

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

Beck within said ten-day period, it will include in such Registration Statement such number of Seller's Adjusted Closing Shares owned by Seller as Seller may have so requested, provided, however, that the number of such Shares of Seller to be included in such Registration Statement has a market value of no less than \$750,000; and the underwriters in any such offering do not advise that the inclusion of such shares of Seller would materially interfere with the public offering of the shares covered by the Registration Statement. Notwithstanding the foregoing, Seller shall in no event sell or transfer within 18 months from the Closing, more than 25% of the Adjusted Closing Shares. All decisions with respect to any such Registration Statement and public offering shall be made by Beck.

Beck agrees to furnish to Seller a reasonable number of preliminary, final, amended or supplemented prospectuses relating to the distribution of any of the Seller's shares of Common Stock which are registered as aforesaid.

Beck agrees to include Seller's registered shares in all applications for qualification under State Securities or Blue Sky Laws as are otherwise filed by Beck in connection with the public offering to which such Registration Statement pertains.

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

The obligations of Beck set forth in this Section 5.02 shall be performed by it without cost or expense to Seller, which term "cost or expense" shall mean all costs and expenses ordinarily incurred in connection with public offering of securities, including, without limitation, filing fees with federal and state authorities, printing costs and fees and expenses of counsel and accountants but shall not include fees and expenses of Seller's counsel and accountants or underwriting discounts, commissions and expenses with respect to the shares of the Seller.

Seller agrees to furnish Beck with all information concerning Seller necessary to prepare the Registration Statement hereunder, and agrees to indemnify Beck against all claims, losses, damages and liabilities caused by any untrue statement of a material fact contained in the Registration Statement filed or any qualification made pursuant to this Agreement or by any omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading insofar as the same may have been caused by an untrue statement or omission of a material fact based upon information furnished in writing to Beck by Seller for use in preparation thereof.

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

In the event that during the 18 month period commencing 18 months after Closing and ending on the Cut-off Date, a Piggyback Notice has been given by Beck to Seller and (i) Seller has advised Beck that Seller wishes to include his Adjusted Closing Shares in the Registration Statement with respect to which said Piggyback Notice relates and (ii) there is a Price Deficiency on the Registration Date of such Registration Statement, then Seller shall have the right to withdraw his Adjusted Closing Shares from inclusion in such Registration Statement prior to the effectiveness of such Registration Statement.

The obligations of Beck under this Section 5.02 relate only to the Adjusted Closing Shares. Beck shall have no further obligations to Seller under this Section 5.02, (i) if it has given a Piggyback Notice to Seller during the 18 month period commencing 18 months after the Closing, pursuant to this Section 5.02, and there was no Price Deficiency on the Registration Date of the Registration Statement to which such Piggyback Notice related and the underwriters for said public offering did not advise Beck that the inclusion of Seller's shares of Beck Common Stock would materially interfere with the public offering of the shares covered by such Registration Statement or (ii) if the Adjusted Closing Shares are no longer

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

owned by Seller. Notwithstanding the foregoing provisions of this Section 5.02, Beck shall have no obligations under this Section 5.02 with respect to any Shares owned by Seller if, in the opinion of counsel to Beck, the sale by Seller of his Adjusted Closing Shares would not be in violation of the Securities Act of 1933, as amended.

5.03. Registration Initiated by Seller. In the event that during the 18 month period commencing 18 months after the Closing and ending on the Cutoff Date (i) a Piggyback Notice has not been given; or (ii) if one or more Piggyback Notices have been given during such 18 month period commencing 18 months after the Closing and ending on the Cutoff Date either: (A) there was no Price Deficiency on the Registration Date(s) of the Registration Statement(s) with respect to which such Piggyback Notice(s) related but the underwriters in all the offering(s) with respect to which such Piggyback Notice(s) related advised Beck that the inclusion of Seller's Shares of Beck Common Stock would materially interfere with the public offering of the shares covered by such Registration Statement(s) with respect to which such Piggyback Notice(s) related; or (B) there was a

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

Price Deficiency on the Registration Date(s) of the Registration Statement(s) to which such Piggyback Notice(s) related and none of Seller's Adjusted Closing Shares were included in such Registration Statement(s), then Beck agrees that if at any one time only during the thirty (30) day period commencing on the Cutoff Date, Seller requests Beck to register the Adjusted Closing Shares (and any additional Shares of Beck Common Stock which may be delivered to Seller pursuant to Section 4.02(f)), Beck shall, as soon as practicable after Seller makes such request in writing, prepare and file a Registration Statement with respect to such Shares of Seller; file all necessary amendments to such Registration Statement; use its best efforts to cause such Registration Statement to become effective as soon as practicable; furnish to Seller a reasonable number of preliminary, final, amended or supplemented prospectuses relating to the distribution of Seller's shares; qualify the Shares under State Securities or Blue Sky laws of such states as Seller may reasonably request unless registration in any such state necessitates the amendment of Beck's Certificate of Incorporation or By-Laws or

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

its qualification as a foreign corporation in any such state or if such registration in such state shall be unduly burdensome; provided however that the sale of such Shares under such Registration Statement shall be made through underwriters arranged for or agreeable to Beck. The Seller shall not be entitled to more than one registration under this Section 5.03 and in such case such registration shall be for an aggregate of not less than such number of Shares of Common Stock of Beck having a market value of no less than \$2,500,000. The obligations of Beck set forth in this Section 5.03 shall be performed by it without cost or expense to Seller, which term "cost or expense" shall mean all costs or expenses ordinarily incurred in connection with public offering of securities, including, without limitation, filing fees with federal and state authorities, printing costs and fees and expenses of counsel and accountants, but shall not include fees and expenses of Seller's counsel and accountants, or underwriting discounts, commissions and expenses with respect to the Shares of Seller.

Seller agrees to furnish Beck with all information concerning Seller necessary to prepare the Registration Statement hereunder, and agrees to indemnify Beck against all claims, losses, damages and liabilities caused by any untrue statement of a material fact contained in the

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

Registration Statement filed or any qualification made pursuant to this Agreement or by any omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading insofar as the same may have been caused by an untrue statement or omission of a material fact based upon information furnished in writing to Beck by Seller for use in preparation thereof.

The obligations of Beck under this Section 5.03 relate only to the Adjusted Closing Shares (and any additional shares of Beck Common Stock which may be delivered to Seller pursuant to Section 4.02(f)). Beck shall have no further obligations to Seller under this Section 5.03 if (i) Beck has given a notice during the 18 month period commencing 18 months after the Closing and ending on the Cutoff Date to Seller pursuant to Section 5.02 and there was no Price Deficiency on the Registration Date of the Registration Statement with respect to which such Piggyback Notice related and the underwriters for such public offering have not advised Beck that the inclusion of Seller's shares would materially interfere with the public offering of the shares covered by the Registration Statement with respect to which such Piggyback Notice related, or, if there was a Price Deficiency on such Registration Date, some of Seller's Shares were included

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

in the Registration Statements with respect to which such Piggyback Notice related; or (ii) the Adjusted Closing Shares are no longer owned by Seller. Notwithstanding the foregoing provisions of this Section 5.03, Beck shall have no obligations under Section 5.03 with respect to any shares owned by Seller if, in the opinion of counsel to Beck, the sale by Seller of his Adjusted Closing Shares would not be in violation of the Securities Act of 1933, as amended. In the event Beck receives the opinion of its Counsel set forth in the preceding sentence or in Section 5.02 that the sale by Seller of his Shares of Beck Common Stock would not be in violation of the Securities Act of 1933, as amended, then upon delivery by Seller to the transfer agent of the certificates for the Shares of Beck Common Stock, Beck shall cause the removal of the legend from such certificates placed thereon in accordance with Section 5.01.

VI. Action by Seller and Corporations Prior to Closing

6.01. Prohibited Actions. (a) From and after the Agreement Date to and including the Closing, Seller shall not permit any Corporation to take any action of the kind described in Section 1.15 hereof. Seller shall

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

not and shall not permit any Corporation to take any action which would cause any of the covenants, representations or warranties of Seller contained in this Agreement not to be true and correct in all material respects as of the Closing, or which would result in a breach or non-performance of any of Seller's agreements or obligations contained in this Agreement.

(b) Except as permitted by the terms of this Agreement, from and after the Agreement Date to and including the Closing, Beck shall not take any action which would cause any of the representations and warranties of Beck not to be true in all material respects as of the Closing, or which would result in a breach or non-performance of any of Beck's agreements or obligations contained in this Agreement.

*See and
page*

VII. Conditions to Obligations of Beck

The obligations of Beck are, at its option, subject to the following conditions:

7.01. Truth of Representations and Warranties.

The representations and warranties of Seller to Beck contained in this Agreement shall in all material respects

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

be true and correct as of the time of Closing, with the same force and effect as though such had been made and given at that time. Seller shall otherwise have fully complied with and performed all of his obligations hereunder and Beck shall have received a certificate to the foregoing effect signed by the Seller.

7.02. Legal Opinion. There is delivered to Beck on the Closing the favorable opinion of Brown & Altshuler, counsel for Seller and the Corporations, dated as of the Closing Date, in form and substance satisfactory to Beck's counsel, as to the matters specified in Sections 1.01, 1.02, 1.03 and 1.04 hereof, and to the effect that Seller has full power and authority to consummate the transactions contemplated by this Agreement. Such opinion shall also state that each Corporation has good and marketable title to all its property and assets as set forth in Sections 1.08 and 1.09 and that such counsel does not know or have any reasonable grounds to know of any litigation, proceeding or governmental investigation pending, or threatened against or related to Corporations, their properties or business, except as set forth in Schedule 4; that no consent of the

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

Corporations Commissioner of the State of California is required for the transfer of Seller's shares of capital stock of Corporations to Beck pursuant to this Agreement and all legal and other authorizations necessary for the transfer of all of Seller's shares of capital stock of Corporations to Beck pursuant to this Agreement have been obtained.

7.03. Casualty Losses. On or prior to the time of Closing, no Corporation shall have sustained any loss, whether or not insured, by reason of physical damage to any of its assets or properties caused by fire, flood, accident, explosions or other calamity which would impair the carrying on of its business in the normal and regular course.

7.04. Corporate Changes. On the Closing Date, Seller shall take or cause to be taken such action as Beck may request with respect to changes of, or increases in number of, directors, changes of officers, amendments to the by-laws of the Corporations and the adoption of such other resolutions by the respective Corporations' board of directors as Beck may request.

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

7.05. Continuity of Management and Operation.

Seller shall, at the time of the Closing, enter into a five year employment agreement with Corporations at the compensation and other terms set forth in the form of agreement hereto annexed as Exhibit A. Seller shall also, except as otherwise requested by Beck, cause each Corporation to use its best efforts (without making any commitment on Beck's behalf) to preserve its business organization intact; to keep available to each Corporation the services of its officers and employees; to preserve for each Corporation the good will of its business and to continue the business of each Corporation in regular course.

VIII. Conditions to Obligations of Seller

The obligations of Seller hereunder are, at Seller's option, subject to the following conditions:

8.01. Truth of Representations and Warranties.

The representations and warranties of Beck contained in Section 2.01 hereof shall in all material respects be true and correct as of the time of Closing and with the same force and effect as though such had been made at that time and Beck shall have fully complied with and performed all

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

of its other obligations hereunder. Seller shall have received a certificate to the foregoing effect signed by an officer of Beck and based on his knowledge and belief.

IX. Termination

9.01. Notwithstanding anything herein contained to the contrary, if the American Stock Exchange does not approve the additional listing on official notice of issuance of all the shares required to be delivered by Beck to the Seller in accordance with the provisions of Section 4.02(a) of this Agreement on or before October 20, 1969, then, this Agreement shall thereupon terminate and come to an end, and all of the parties hereto shall thereupon be relieved of and from any liability hereunder with the same force and effect as if this contract had never been made.

10.02. Delivery by Seller to Beck. At or prior to the Closing, subject to the terms and conditions of this Agreement, Seller will deliver or cause to be delivered to Beck:

- (a) Certificates representing all of the outstanding shares of capital stock of each Corporation, duly endorsed for transfer to

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

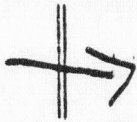
Beck with signatures appropriately guaranteed and with all requisite revenue stamps affixed;

(b) The opinion of Brown & Altshuler, counsel for Seller and the Corporations, required by Section 7.02 hereof;

(c) The minute books, corporate seals, stock record books, and all other corporate records of each Corporation;

(d) The certificates required by Article V hereof; and

(e) The certificates, agreements and documents required by Article VII hereof.



10.03. Delivery by Beck to Seller. At the Closing, subject to the terms and conditions of this Agreement and the delivery by Seller of the certificates for the shares of capital stock constituting the subject of the sale hereunder, Beck will deliver or cause to be delivered to Seller:

(a) The shares required to be delivered to Seller at the Closing pursuant to Section 4.02(a); and

(b) The certificate required by Section 8.01.

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

X. Closing Date

10.01. The Closing (herein sometimes referred to as the "Closing", "Closing Date" or "Date of Closing") shall take place on October 31, 1969, at the offices of Weisman, Celler, Allan, Spett & Sheinberg, 1501 Broadway, New York, New York, at 10 o'clock in the forenoon of that day, or such other reasonable date upon which the parties shall agree to suit the convenience of each other.

XI. General Provisions

11.01. Brokerage Commissions. Seller agrees to indemnify Beck against and hold Beck harmless from any and all liabilities to any persons claiming brokerage commissions or finders fees on account of services purportedly rendered on behalf of Seller in connection with this Agreement or the transactions contemplated hereby.

Beck agrees to indemnify Seller against and hold Seller harmless from any and all liabilities to any person claiming brokerage commissions or finders fees (including D.H.Blair Securities Corp., Inc.) on account of services purportedly rendered on behalf of Beck in connection with this Agreement or the transactions contemplated hereby. Beck's indemnity set forth in this Section 11.01 includes

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

indemnification for any claim made by D. H. Blair Securities Corp., Inc. against Seller for finder's fees on account of this Agreement.

11.02. Purchase of Accounts Receivable. Seller agrees to purchase from each Corporation, within ten (10) days after written demand therefor by such Corporation or Beck, the unpaid balance of all accounts and other receivables of such Corporation on hand at the Closing which are uncollected one hundred eighty (180) days after the Closing. Seller shall pay for such of said accounts and other receivables designated by Beck to be sold to Seller as hereinabove provided, the unpaid balance of each thereof and Beck shall assign such accounts and other receivables, without recourse, to Seller against receipt of payment therefor as herein provided.

11.03. Restrictive Covenant. The Seller agrees that, from and after the Closing, he will not, for a period of ten (10) years thereafter, unless acting as an officer or employee of Beck or with Beck's prior written consent: (a) directly or indirectly own, manage, operate, join, control or participate in or be connected as an officer, employee, partner or otherwise with any company engaged in

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

any business in competition with the businesses of any Corporation as of the date hereof or as of the Closing Date; or (b) knowingly divulge, furnish or make accessible to any third party or organization any confidential information concerning the Corporations or any aspect of their businesses, including, without limitation, confidential methods of operation and organization, confidential sources of supply and customer lists. Seller acknowledges that the remedy at law for any breach by him of the foregoing will be inadequate and that each Corporation and Beck shall be entitled to injunctive relief for any breach or threatened breach of this covenant.

11.04. In the event Seller is liable to Beck pursuant to the provisions of Article I or Section 11.02, the Seller shall discharge such liability to Beck by delivering to Beck such number of shares of Common Stock of Beck, valued at the Closing Value, which shall be equal to the amount of the liability to be discharged. The certificates representing such shares of Common Stock of Beck shall be duly endorsed for transfer to Beck in deliverable form and such Shares shall be delivered to Beck free and clear of all liens, claims, encumbrances or restrictions.

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

11.05. Governing Law. This Agreement is being delivered and is intended to be performed in the State of New York and shall be construed and enforced in accordance with the laws of such state.

11.06. Notices. Any notices given by Beck to Seller hereunder shall be sufficient if delivered personally or sent by certified mail to the Seller at his address set forth above. Any notices given by Seller to Beck hereunder shall be sufficient if delivered personally or by certified mail, return receipt requested, to Beck Industries, Inc., 25 West 43rd Street, New York, New York 10036, with a copy to Weisman, Celler, Allan, Spett & Sheinberg, 1501 Broadway, New York, New York 10036.

This Agreement shall be binding upon and inure to the benefit of Seller and Beck and the successors and assigns of each of them. This instrument contains the entire agreement of the parties and may not be changed or modified except in writing, signed by the parties against whom enforcement of any change or modification is sought.

266a

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

IN WITNESS WHEREOF, the Seller and Beck each
cause this Agreement to be duly signed on the date first
above written by its duly authorized officer.

BECK INDUSTRIES, INC.

By: R. M. [Signature]
Texas
Henry Daniels
HENRY DANIELS

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

AGREEMENT made this day of 1969 .
between POMETT MFG. CORP. and SWIRTS, INC., California
corporations having offices at 714 South Los Angeles
Street, Los Angeles, California (herein collectively
called "Employer"), and HENRY DANIELS, residing at 540
Haynes, Trousdale Estates, Beverly Hills, California
(herein called "Employee").

W I T N E S S E T H :

1. Employer hereby employs Employee and Employee
hereby accepts employment upon the terms and conditions
hereinafter set forth.

2. The term of this Agreement shall be for a
period of five (5) years to begin on the date hereof
and to terminate on 1974. In the event
Employee remains or continues in the employ of Employer
after 1974, such employment, in the ab-
sence of further written agreement, shall be on an at-
will basis terminable by either party hereto on written
notice to the other.

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

3. Employee shall perform such executive, sales and administrative services in connection with the businesses of Employer and its parent, subsidiaries and affiliates as Employer may from time to time assign to Employee, and all of the services to be rendered hereunder by Employee shall at all times be subject to the control, direction and supervision of the Board of Directors of Employer, to which Employee does hereby agree to be bound. Employee shall devote his entire time, attention and energies as in the past to the business and affairs of Employer and its parent, subsidiaries and affiliates as Employer shall from time to time direct, and shall use his best efforts, skills and abilities as in the past in the performance of his services hereunder and to promote the interests of Employer and its parent, subsidiaries and affiliates. Employer may not require Employee to relocate his principal residence as set forth above, but this shall not prevent Employer from requiring Employee to travel outside the Greater Metropolitan Los Angeles, California, area in the performance of his duties hereunder. Employer

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

may not, however, require Employee to perform any services of a nature which he has not heretofore performed for Employer (it being understood, however, that Employer may require such services to be rendered to the parent or affiliates of Employer). Employee further agrees during the term of this Agreement to serve as an officer or director of Employer, its parent, subsidiaries or of any affiliate of Employer as Employer may request, and if Employee serves as such officer or as a director, he will do so without additional compensation.

4. For all services rendered by Employee during the term of this Agreement, Employer shall pay Employee a salary at the rate of Seventy-Two Thousand (\$72,000.00) Dollars per annum, payable in monthly installments of Six Thousand (\$6,000.00) Dollars on the last day of each month during the term of this Agreement. Nothing in this Agreement will prevent the Board of Directors of Employer from at any time, upon Employee's prior written consent, increasing the compensation to be paid to Employee in the event the Board of Directors of Employer, in its sole discretion, evidenced by a resolution adopted

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

by such Board of Directors, shall deem it advisable to do so in order to compensate Employee fairly for services to be rendered, but nothing herein contained will obligate the Board of Directors of any of the members thereof to make such increase. Employee will be entitled to a yearly paid vacation of a reasonable duration. It is the intention of Employer to include Employee in any insurance, pension or other fringe benefit program generally maintained by Employer for which Employee is eligible, but nothing herein contained will obligate Employer to adopt or continue any such program or to fix or retain eligibility requirements therefor so as to include Employee. Employee's salary may be paid to Employee by check or checks of Employer or its parent or any of its subsidiaries or affiliates in such proportions as Employer may from time to time find proper and appropriate. Employer may make appropriate deductions from the said payments required to be made in this paragraph 4 to Employee to comply with all governmental withholding requirements.

5. During the term of this Agreement, Employer will reimburse Employee for traveling or other out-of-pocket expenses and disbursements incurred by Employee

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

with Employer's approval in furtherance of the businesses of Employer, its parent, its subsidiaries or affiliates, upon presentation of expense statements or vouchers and such other supporting information as Employer may from time to time request and shall make available an automobile for the rendition of Employee's services hereunder.

6. Both parties recognize that the services to be rendered by Employee pursuant to this Agreement are extraordinary and unique. During the term of this Agreement, during the period of any subsequent employment by Employer, and for a period of three (3) years after the termination of all employment of Employee by Employer, Employee shall not: (a) directly or indirectly, enter into the employ of or render any services to any person, partnership, association or corporation engaged in a business or businesses in any way, directly or indirectly, competitive to those now or hereafter engaged in by Employer, its parent, or by any of Employer's subsidiaries or affiliates; and Employee shall not engage in any such business, directly or indirectly, as an individual, partner, shareholder, director, officer, principal, agent, employee, trustee, consultant, or in any other relationship or capacity; or (b) divulge, furnish

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

or make accessible to any third person or organization, any confidential information concerning Employer, its parent, or Employer's subsidiaries and affiliates, or the businesses of any of the foregoing, including, without limitation, confidential methods of operation and organization, confidential sources of supply and customer lists. Employer shall be entitled, if it so elects, to institute and prosecute proceedings in any court of competent jurisdiction, either in law or in equity, to obtain damages for any breach of this Agreement or to enjoin Employee from any breach of this Agreement, but nothing herein contained shall be construed to prevent Employer from pursuing such other remedies as Employer may elect to invoke.

7. In the event any provision of paragraph 6 of this Agreement shall be held invalid or unenforceable by reason of the geographic or business scope or the duration thereof, such invalidity or unenforceability shall attach only to such provision and shall not affect or render invalid or unenforceable any other provision of this Agreement, and this Agreement shall be construed

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

as if the geographic or business scope or the duration of such provision had been more narrowly drawn so as not to be invalid or unenforceable.

8. The waiver by Employer of a breach of any provision of this Agreement by Employee shall not operate or be construed as a waiver of any subsequent breach by Employee.

9. Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and sent by United States certified or registered mail to his address as stated on Employer's records, in the case of Employee, or to Employer, c/o Beck Industries, Inc., attention President, 25 West 43rd Street, New York, New York 10036, in the case of Employer.

10. The rights and obligations of Employer under this Agreement shall inure to the benefit of and shall be binding upon the successors or assigns of Employer.

11. This Agreement shall be construed in accordance with the laws of the State of New York.

DEFENDANTS' EXHIBIT B FOR IDENTIFICATION

12. This instrument contains the entire agreement between the parties. It may not be changed, extended or renewed orally, but only by agreement in writing signed by the party against whom enforcement of any waiver, change, modification, discharge or extension is sought.

IN WITNESS WHEREOF, this Agreement has been duly executed the day and year first above written.

POMETT MFG. CORP.

By _____

SWIRTS, INC.

By _____

*Signed by
Daniel July 1, 1969*

HENRY DANIELS

DEFENDANTS' EXHIBIT C FOR IDENTIFICATION.
LAW OFFICES OF

(212) 524-9700
CABLE-WEI CEL

WEISMAN, CELLER, ALLAN, SPETT & SHEINBERG

MILTON C. WEISMAN
EMANUEL CELLER
SAMUEL S. ALLAN
MURRAY C. SPETT
ADOLPH KAUFMAN
SYDNEY B. WERTHEIMER
HOWARD S. MOOLIN
G. JOHN ROGGE
SAMUEL R. RUDEY
HERBERT S. KELLER
HERBERT R. BERK
IRVING ROZEN
ABRAHAM SHAPIRO
EMANUEL HASER
RICHARD A. OSSERMAN
MILTON WAXENFELD
MORRIS GUTT
GEORGE M. LEHR

10/25/69
EX. NO. C2 10
DATE 11-24-76 KR

1501 BROADWAY
NEW YORK, N.Y. 10036

December 9, 1969

Reference is made to Agreement and Plan of Reorganization ("Agreement") dated July 1, 1969, as amended, between Henry Daniels ("Seller") and Beck Industries, Inc. ("Beck") relating to the proposed acquisition by Beck of all of the outstanding capital stock of Pomett Mfg. Corp. and Swirts, Inc. from Seller.

Receipt is acknowledged by the undersigned of the following documents to be held in escrow upon the terms and conditions hereinafter set forth:

Received from Seller:

1. Certificate of Seller pursuant to Section 7.01 of the Agreement.
2. Certificate of Seller pursuant to Section 5.01 of the Agreement.
3. Opinion letter of Seller's counsel pursuant to Section 7.02 of the Agreement.
- new* *[Signature]* 4. Stock Certificate No. 8 of Pomett Mfg. Corp. for 75 shares issued in the name of Henry Daniels with attached ~~stock~~ power endorsed in blank.
- new* *[Signature]* Stock Certificate No. 2 of Swirts, Inc. for 5 shares issued in the name of Henry Daniels with attached stock power endorsed in blank.
- new* *[Signature]* 5. Stock Certificate No. ¹⁰9 of Pomett Mfg. Corp. for 75 shares issued in the name of Beck.

DEFENDANTS' EXHIBIT C FOR IDENTIFICATION

7. Stock Certificate No. 3 of Swirts, Inc. for 5 shares issued in the name of Beck.
8. Minute books, stock certificate books and ~~seals~~ of Pomett Mfg. Corp. and Swirts, Inc.
9. Receipt of Seller for 140,351 shares of Beck common stock received from Beck.
10. Two executed copies of employment agreement in the form of Exhibit A to the Agreement.

Received from Beck:

1. Certificate pursuant to Section 8.01 of the Agreement.
2. Stock Certificate of Beck for 140,351 shares of Beck common stock issued in the name of Seller.

The aforesaid items and documents received from Seller shall be delivered to Beck, except that one copy of the employment agreement referred to in item 10 shall be delivered to Seller, and the aforesaid documents received from Beck shall be delivered to Seller, at the same time, in New York, New York, upon the earlier of the qualification under the California Corporate Securities Law of 1968 of the shares of Common Stock of Beck to be issued by Beck to Seller pursuant to the Agreement, or December 31, 1969, and the escrow shall thereupon terminate. These instructions are irrevocable and may not be changed.

The escrow agent shall be fully protected and held harmless by Seller and Beck from all liability, loss, cost, damage or expense in acting or omitting to act pursuant to any signature or document believed by it to be genuine, including evidence of the qualification of the shares of common stock of Beck under the aforesaid California Corporate Securities Law of 1968. The escrow agent shall be responsible only for such securities received from Seller and Beck as shall be actually received by it as escrow agent and shall not be liable by reason of any depreciation of any of the value thereof; or for any act or omission to act or any error of judgment made in good faith by it in the administration of

277a

DEFENDANTS' EXHIBIT C FOR IDENTIFICATION

the escrow or in performing any of its powers or duties or for any loss or damage in connection therewith not occasioned by its own wilful malfeasance.

WEISMAN, CELLER, ALLAN,
SPETT & SHEINBERG

By: Arthur Waxenfeld

CONSENTED AND AGREED TO:

Henry Daniels
HENRY DANIELS .

BECK INDUSTRIES, INC.

By: Arthur A. Slater, Jr.

DEFENDANTS' EXHIBIT D FOR IDENTIFICATION.

BECK INDUSTRIES, INC.
28 West 44th Street
New York, N.Y. 10036

October , 1969

Mr. Henry Daniels
540 Haynes, Trousdale Estates
Beverly Hills, California

Dear Mr. Daniels:

We refer to our agreement and plan of reorganization dated July 1, 1969 with respect to our acquisition of the capital stock of Pomett Mfg. Corp. and Swirts Incorporated. The agreement is modified as follows:

1. Section 9.01 is hereby modified by substituting the words "December 31, 1969" for and in place of the words "October 20, 1969" contained in said section.
2. Section 10.01 is hereby modified to read in full as follows:

"10.01. The Closing (herein sometimes referred to as the "Closing", "Closing Date" or "Date of Closing") shall take place at the offices of Weisman, Celler, Allan, Spett & Sheinberg, 1501 Broadway, New York, New York, at 10 o'clock in the forenoon of a day that shall be no later than December 31, 1969, and may be such earlier other reasonable date upon which the parties shall agree to suit the convenience of each other provided, however, that after the Closing has taken place, the date thereof shall be deemed to have been October 31, 1969, for the purposes of the commencement of the five year term of employment under 7.05. and the commencement of the term of the restrictive covenant under 11.03. of the agreement".

279a

DEFENDANTS' EXHIBIT D FOR IDENTIFICATION

All other terms of said agreement remain the same. Please signify your acceptance of the foregoing by signing below where indicated.

Very truly yours,

BECK INDUSTRIES, INC.

By Bertie H. Hatcher V.P.

ACCEPTED AND AGREED TO:

Henry Daniels
Henry Daniels

280a

DEFENDANTS' EXHIBIT E FOR IDENTIFICATION.

BECK INDUSTRIES, INC. 28 WEST 44 ST., NEW YORK, N.Y. 10036 • (212) 947-6600

February 25, 1970

9m 3/30/70

EX. NO. E 10
DATE 11-24-76 KR

Mr. Howard Modlin
Weisman, Celler, Allan, Spett & Sheinberg
1501 Broadway
New York, New York

Re: Beck Industries, Inc. - Pomett & Swirts

Dear Howard:

You will recall from the Hartog Agreement, the pertinent pages of which are enclosed herewith, the provisions relating to redelivery of shares by Hank Daniels if the earnings of the two corporations for the year ended October 31, 1969 were less than \$350,000.

We have now received the certified statements of Clarence Rainess & Co. relating to the corporations and they indicate that Pomett earned \$249,554 and Swirts earned \$59,986, for a combined total of \$309,540 for the year ended October 31, 1969. In accordance with the Agreement we have multiplied the deficiency (\$40,460) by 12 and divided the result (\$485,520) by the Closing Value (\$29.925c) and come up with a total of 16,225 shares to be redelivered.

281a

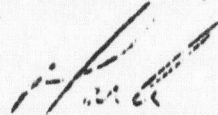
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Would you see that the proper notice is given and action taken to effect redelivery of the shares.

Best regards.

Sincerely,

BECK INDUSTRIES, INC.



Mark Williams
Corporate Counsel

MW:rr

per purchase agreement \$ 350,000
per Financial Statements
Lewitt 59,996
Ponett 249,554 (309,540)
309,540
40,460 deficiency
x .12 per purchase agreement
485,520

$$485,520 \div 29,925 = 16,225 \text{ shares}$$

I read to financial statements of Lewitt & Ponett Hfy Co prepared by
Clarence L. Lamm & Co.
a. Computations checked
b. Average closing price for last 5 days in June 24,925 + 50 per share

DEFENDANTS' EXHIBIT F FOR IDENTIFICATION.

LAW OFFICES OF

(212) 524-9700
CABLE-WEISCEL

WEISMAN, CELLER, ALLAN, SPETT & SHEINBERG

MILTON C. WEISMAN
 EMANUEL CELLER
 SAMUEL S. ALLAN
 MURRAY C. SPETT
 ADOLPH KAUFMAN
 SYDNEY S. WERTHEIMER
 HOWARD S. MODLIN
 G. JOHN ROGGE
 SAMUEL R. RUDEY
 HERBERT S. KELLER
 HERBERT R. BERN
 IRVING ROZEN
 ABRAHAM SHAPIRO
 EMANUEL HABER
 RICHARD A. OSBERMAN
 MILTON WAXENFELD
 MORRIS GUTT
 GEORGE M. LEHR

1501 BROADWAY
 NEW YORK, N.Y. 10036

June 26, 1969

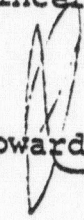
Depts
 EX. NO. F 12
 DATE 11-24-76
 K.R.

James J. Brown, Esq.
 Brown and Altshuler
 9301 Wilshire Boulevard
 Beverly Hills, California 90210

Dear Jim:

In accordance with your request,
 I am enclosing your 1968 Annual Report for
 Beck Industries.

Sincerely,


 Howard S. Modlin

HSM:hp
 Enc.

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283a

DEFENDANTS' EXHIBIT F FOR IDENTIFICATION



DEFENDANTS' EXHIBIT F FOR IDENTIFICATION

Contents

1	Operating Highlights
4	To Our Shareholders
9	Financial Review
10	Report of Independent Accountants
11	Statement of Income
12	Balance Sheet
14	Change in Working Capital
15	Changes in Stockholders' Equity
18	Notes to Financial Statements
20	Officers and Directors

285a

DEFENDANTS' EXHIBIT F FOR IDENTIFICATION

1968 Beck Industries Annual Report

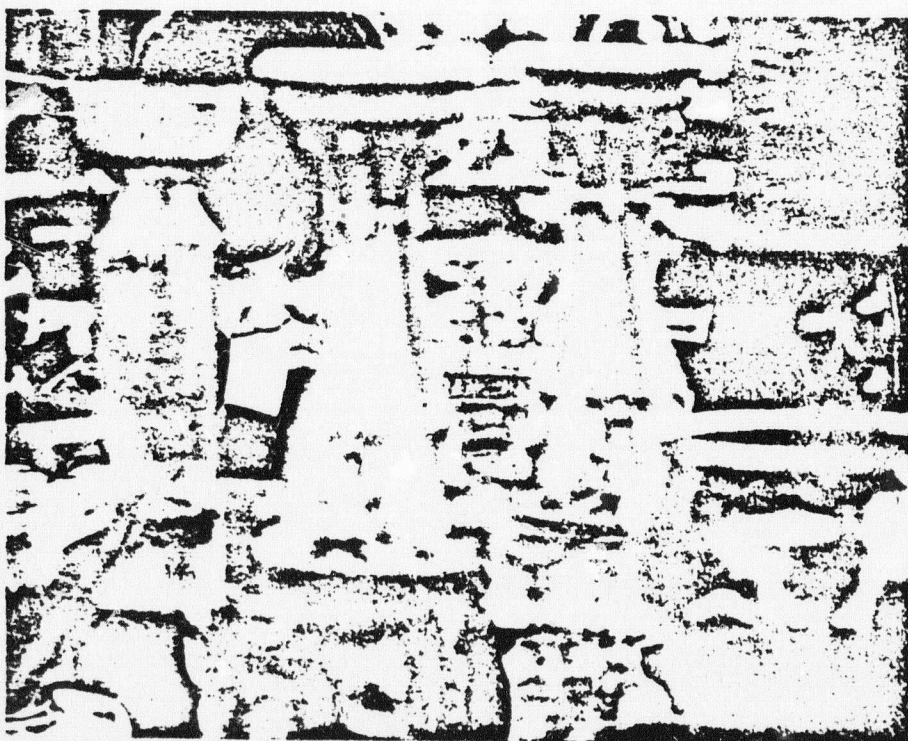
Operating Highlights

Year ended December 31	1968	1967 (As restated)	1967 (As Previously Reported)
Net sales	\$94,380,000	\$31,409,000	\$56,038,000
Net income	3,272,000	2,819,000	1,231,000
Net income per share of common stock after recognition of dividends on preferred stock, and before extraordinary credit	\$ 1.27	\$ 1.02	\$.58
Extraordinary credit	—	.05	.07
Net income per share	\$ 1.27	\$ 1.07	\$.65

286a

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"Not purchasing power, but purchases,
and not production, but consumption,
are the ruling factors of our economy.
Only as a consuming nation can we
remain a producing one. We are a nation
that consumes its way to property,
security, prosperity, and freedom.



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Moreover, we are compelled to do so
at an increasing rate."

Economist Paul Mazur

DEFENDANTS' EXHIBIT F FOR IDENTIFICATION



Beck Industries was formed in the summer of 1968 by a vote of the shareholders of the A.S. Beck Shoe Corporation. Today, Beck Industries bears little resemblance to its predecessor. It has evolved from a marginally profitable women's shoe organization into a fashion and retailing complex with a unique philosophy and a distinct new identity.

In the spring of 1968, the A.S. Beck Shoe Corporation was a complacent company. Sales had been level for several years. Profits were highly erratic, with the best years showing results substantially below industry averages. The present management entered this situation in June of 1968 with the intention of effecting a turn-around . . . not just up to industry standards, but to a level of profitability and return on investment which would make this one of the leading companies in its field.



Our analysis of the requirements to improve Beck Shoe led us to assemble a staff of experts in such areas as finance and control; law; systems design and data processing; real estate selection and negotiation; advertising and public relations; and personnel development and administration.

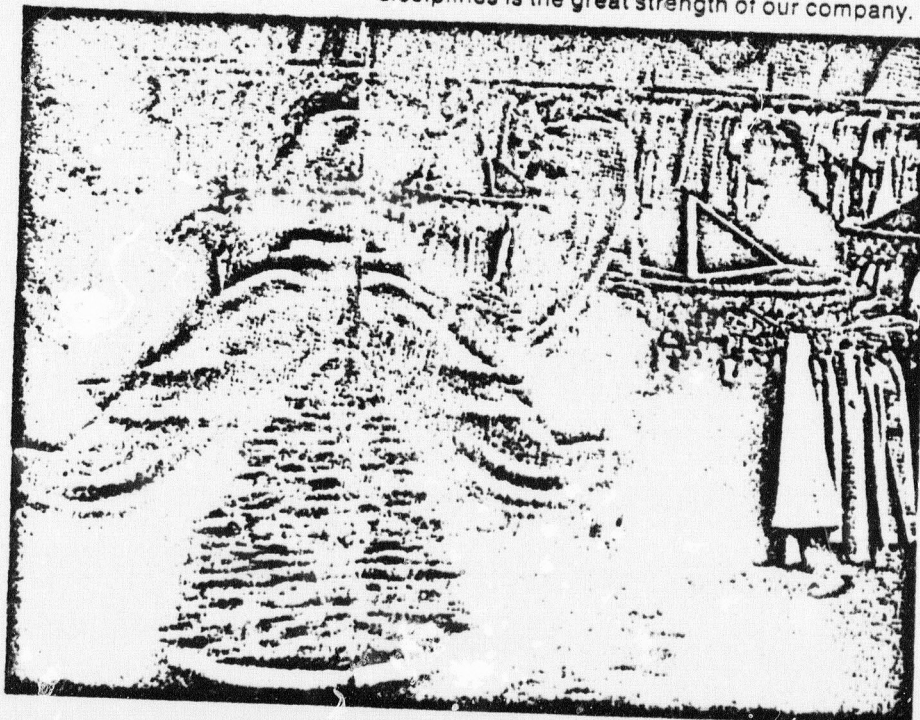
As we developed these capabilities, we began to recognize the high degree of similarity among all retailing operations in their need for these skills. We realized that by applying these skills to a more broadly based retail company, not only would the economics be greatly improved, but the challenges involved would enable us to attract the best specialists available.

DEFENDANTS' EXHIBIT F FOR IDENTIFICATION

Further study of the field of retailing led us to the conclusion that merchandising excitement and profits are closely related to fashion. Fashion today is a fifty billion dollar business. It entices a woman to buy another black crepe dress although she already has five. It causes young girls to discard a complete wardrobe of high heeled "spikes" for ten pairs of "the ugliest shoes you have, please". It induces normally conservative businessmen to don peacock blue shirts with neon pink ties. Fashion is exciting, fickle, exhilarating, ever-changing, and—for those retailers who are tuned-in to what's happening—profitable.

The merchants who have been most successful in profiting from this dynamic industry are the individual entrepreneurs who operate on a local or regional basis. They stay close enough to their market and close enough to their employees to feel the heartbeat of their business.

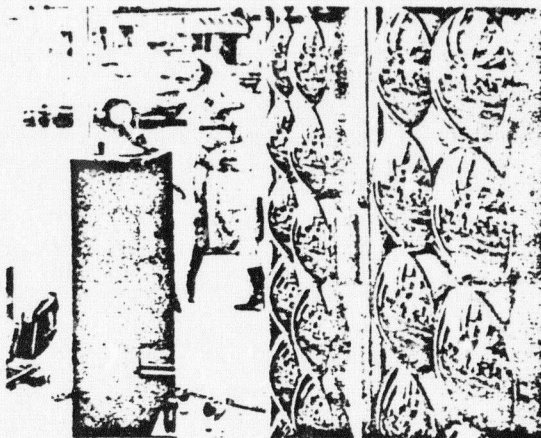
It is our belief that through these merchants we can maintain the sensitivity of regional merchandising while achieving the efficiency of a large corporation. A company which joins with us continues to operate with a high degree of freedom, with all merchandising and selling supervised by the profit-oriented merchant who remains in charge of his regional organization. At the same time, the merchant has the support and assistance of highly skilled corporate specialists for services which he formerly had to do without, perform himself, or purchase uneconomically. We believe this joining of creative entrepreneurial spirit with modern management disciplines is the great strength of our company.



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Since last summer, several successful entrepreneurs have recognized this increased opportunity and joined with us. Each is above industry averages in sales growth and profitability and is characterized by strong, aggressive management. With the financial and staff support which we can now provide, we fully expect their future activities to be even more successful.

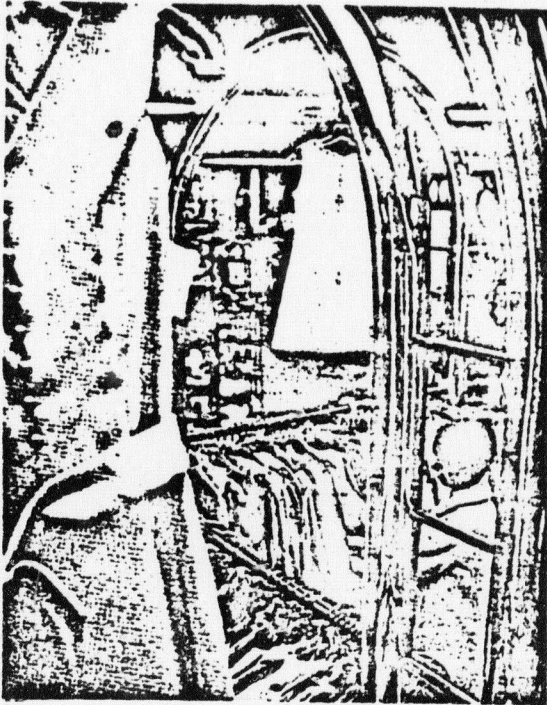
These acquisitions have provided Beck with foundations for future growth in four new merchandise areas: women's specialty shops, men's shops, furniture stores, and junior department stores. In addition, we have greatly enhanced our position in footwear.



At this moment we are unusually well situated financially to capitalize on the opportunities which our philosophy and structure provide. While Beck Industries had no significant long-term debt at year end, we also had less stockholder equity than we considered desirable. To improve our position, we arranged for the placement of 260,000 shares of Common Stock and are presently concluding arrangements for the sale of \$6,000,000 of convertible subordinated debentures to the trust department of a major New York City bank. These placements will provide funds to finance the internal growth of Beck Industries and enable us to make discreet acquisitions as they present themselves.



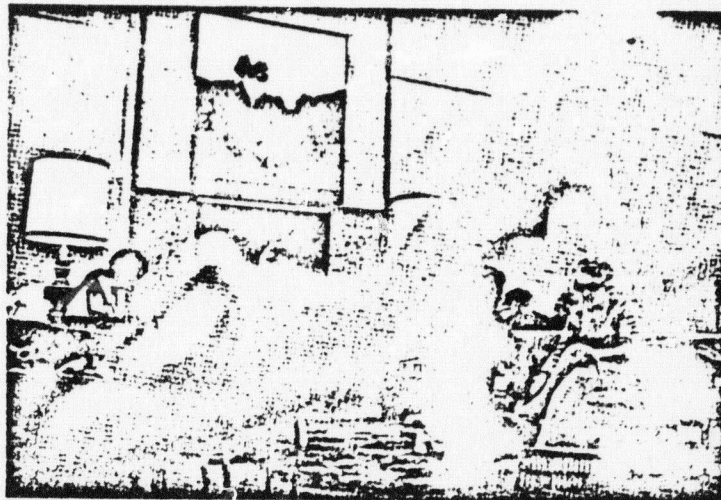
DEFENDANTS' EXHIBIT F FOR IDENTIFICATION



In addition, since the beginning of 1969, we have eliminated a preferred stock issue which was in arrears and had been restricting our borrowing capacity and growth.

Our performance for 1968 included six acquisitions which have been treated on a pooling of interests basis, and three others which were included for various periods of up to six months. As a result, we are able to report 1968 earnings of \$1.27 per share. Comparable 1967 earnings, as restated, were \$1.02 per share before an extraordinary credit of \$.05 per share. These results reflect the four for one stock split which was paid on January 7, 1969.

DEFENDANTS' EXHIBIT F FOR IDENTIFICATION



Despite the dramatic improvement in 1968 earnings, the major impact of a turnaround in the Beck Shoe operation is yet to be felt. A number of steps have been taken which should begin to be felt in the latter half of 1969 and first half of 1970. We have been successful in attracting some of the top management personnel in the shoe industry through direct hiring and through judicious acquisitions. As a result, we have enhanced our manufacturing and merchandising abilities while giving a better balance to our business through broadened price lines and wider geographic coverage.

We believe that in the coming year, each one of our corporate additions will achieve increases in both sales and earnings. Also, we hope to make further acquisitions of companies in the fashion and retailing industry. With improvement in footwear operations, internal growth, the inclusion of full year results of past acquisitions, and future acquisition activity, we feel that we have laid the basis for substantially higher earning power for Beck in 1969 and future years.



We at Beck Industries are dedicated to the goal of improving the earnings per share of your company by capitalizing on those opportunities we view on the business horizon. It is your evaluation of these efforts that should be your basis for remaining or becoming a shareholder in Beck Industries. It is for us to justify the confidence that you, our shareholders, have placed in us.

Chas. F. McDevitt
President
New York, New York
March 27, 1969

Financial Review

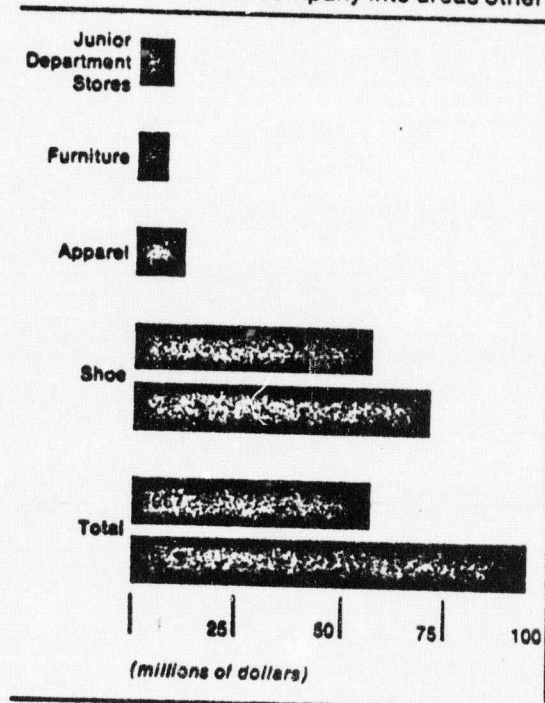
293a

DEFENDANTS' EXHIBIT F FOR IDENTIFICATION

The significant events of the past year, which signal the new direction of Beck Industries, are reflected in its financial performance:

Sales

The following graph illustrates the movement of the company into areas other than shoes:

**Earnings**

The diversification accomplished during the year is also evidenced by per share earnings results (as adjusted for four for one stock split):

	1968	1967	1967
		(As restated)	(As Previously Reported)
Net Income before extraordinary credit	\$1.27	\$1.02	\$.58
Extraordinary credit	—	.05	.07
Net Income	<u>\$1.27</u>	<u>\$1.07</u>	<u>\$.65</u>

Capitalization

At the special stockholders meeting on October 28, 1968, the following amendments to the certificate of incorporation were approved:

- An Increase in the authorized common stock, \$1 par value, from 1,000,000 shares to 10,000,000 shares.
- Authorization to issue 1,000,000 shares of a new class of preferred stock, without nominal or par value.

On November 26, 1968 the Board of Directors declared a 300% stock dividend payable on January 7, 1969 to stockholders of record December 16, 1968.

On December 30, 1968 the 4¾% cumulative preferred stock, par value \$100 per share, was called for redemption at \$129.54 per share, which amount included dividends in arrears. The redemption date was February 18, 1969.

On February 14, 1969, the Company completed a private placement of 250,000 shares of common stock to a small group of purchasers.

The Company is presently concluding arrangements for the sale of \$6,000,000 of convertible subordinated debentures to the trust department of a major New York City bank.

Other recent developments

Subsequent to year end the Company entered into agreements to acquire several companies whose results are not included in the 1968 financial statements. In addition, the Company has an agreement with Vornado, Inc. to purchase the leasehold interests and fixtures of up to ten Unimart department stores in Southern California. Possession of these units by Beck will take place at various dates in 1969 and they will be operated as junior department stores.

DEFENDANTS' EXHIBIT F FOR IDENTIFICATION

Board of Directors
Beck Industries, Inc.
New York, N.Y.

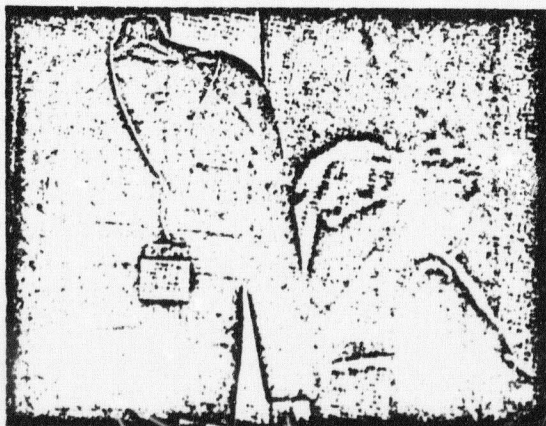
We have examined the consolidated balance sheet of Beck Industries, Inc. (formerly A.S. Beck Shoe Corporation) and subsidiaries as of December 31, 1968, and the related consolidated statements of income, changes in stockholders' equity, and change in working capital for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances, except as set forth in the following paragraph. The statements for the preceding year (as previously reported) were examined by other independent accountants.

We did not examine the financial statements of certain companies acquired subsequent to December 31, 1968 in transactions accounted for as poolings of interests. Amounts for such companies, representing approximately 18% of consolidated net sales and 44% of consolidated net income, are included in the accompanying financial statements on the basis reported on by other independent accountants, whose reports were furnished to us.

In our opinion, based on our examination and the reports of other independent accountants, the accompanying balance sheet and statements of income and changes in stockholders' equity present fairly the consolidated financial position of Beck Industries, Inc. and subsidiaries at December 31, 1968, the consolidated results of their operations and the changes in stockholders' equity for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Further, it is our opinion that the accompanying statement of change in working capital presents fairly the information set forth therein.

Ernst & Ernst

140 Broadway
New York, N.Y. 10005
March 24, 1969



Consolidated Statement of Income

DEFENDANTS' EXHIBIT F FOR IDENTIFICATION

Year ended December 31	1968	1967 Restated (Note A)	1967 (As Previously Reported)
		<i>in thousands</i>	
Net sales	\$ 94,380	\$ 81,409	\$ 56,038
Income from leased departments	966	979	—
	<u>95,346</u>	<u>82,388</u>	<u>56,038</u>
Costs and expenses (including depreciation, principally straight-line, and amortization of \$906,000 in 1968 and \$821,000 in 1967)			
Cost of merchandise sold	55,325	47,019	31,512
Selling, general and administrative expenses	34,975	31,480	22,357
	<u>90,300</u>	<u>78,499</u>	<u>53,869</u>
	5,046	3,889	2,169
Other income	1,174	891	51
	<u>6,220</u>	<u>4,780</u>	<u>2,220</u>
Other deductions	1,034	526	161
	<u>5,186</u>	<u>4,254</u>	<u>2,059</u>
Income before federal income taxes and extraordinary credit	5,186	4,254	2,059
Federal income taxes (Note H)			
Current	1,864	1,490	915
Deferred	50	57	25
	<u>1,914</u>	<u>1,547</u>	<u>940</u>
Income before extraordinary credit	3,272	2,707	1,119
Extraordinary credit arising from utilization of investment tax credit carryover	—	112	112
Net income	<u>\$ 3,272</u>	<u>\$ 2,819</u>	<u>\$ 1,231</u>
Per share of Common Stock (Note I)			
Income before extraordinary credit	\$1.27	\$1.02	\$.58
Extraordinary credit	—	.05	.07
Net income	<u>\$1.27</u>	<u>\$1.07</u>	<u>\$.65</u>

Consolidated Balance Sheet**DEFENDANTS' EXHIBIT F FOR IDENTIFICATION**

Assets	December 31	1968	1967 Restated (Note A)
<i>in thousands</i>			
Current assets			
Cash and certificates of deposit		\$ 7,110	\$ 5,611
Trade accounts receivable, less allowances of \$184,000 (1968) and \$103,000 (1967)		7,862	5,117
Other receivables (Note B)		1,852	783
Inventories (Note C)			
Finished goods		19,373	15,068
Materials and work-in-process		4,240	1,756
		<u>23,613</u>	<u>16,824</u>
Prepaid expenses		772	497
Total current assets		<u>41,209</u>	<u>28,832</u>
 Property plant and equipment, on the basis of cost			
Land and buildings		913	1,833
Leasehold improvements		2,342	2,158
Machinery, equipment and fixtures		11,807	10,472
		<u>15,062</u>	<u>14,463</u>
Less allowances for depreciation and amortization		8,889	8,446
		<u>6,173</u>	<u>6,017</u>
 Other assets and deferred charges (Note B)		1,377	480
 Cost in excess of net assets of businesses acquired		3,617	188
		<u>\$52,376</u>	<u>\$35,517</u>

DEFENDANTS' EXHIBIT F FOR IDENTIFICATION

Liabilities and Stockholders' Equity	December 31	1968	1967 Restated (Note A)
<i>in thousands</i>			
Current liabilities			
Notes payable, principally to banks		\$13,389	\$ 3,106
Amount due on 4¼% Cumulative Preferred Stock (Note E)		3,808	—
Accounts payable		6,993	5,500
Accrued expenses and other liabilities		3,833	3,267
Federal income taxes		1,831	1,385
Current portion of long-term debt		266	371
Total current liabilities		<u>30,120</u>	<u>13,629</u>
Long-term debt (Note D)		2,189	2,728
Sundry liabilities		314	480
Deferred federal income taxes		312	495
Stockholders' equity (Notes A, B, D, E and F)			
4¼% Cumulative Preferred Stock		—	2,939
Second Preferred Stock, Series A, \$4.50 cumu- lative, convertible, no par value, authorized 130,000 shares, issued and outstanding 65,789 shares, liquidating amount \$5,000,000		66	66
Second Preferred Stock, Series B, \$5.20 cumu- lative, convertible, no par value, authorized 30,000 shares, issued and outstanding 29,005 shares, liquidating amount \$3,009,000		29	29
Common Stock, par value \$1 per share, autho- rized 10,000,000 shares in 1968 and 1,000,000 shares in 1967, issued 2,171,031 shares and 519,554 shares, including 960 shares and 240 shares in treasury, respectively		2,170	519
Additional paid-in capital		399	93
Retained earnings		<u>16,777</u>	<u>14,539</u>
		<u>19,441</u>	<u>18,185</u>
Commitments and contingent liabilities (Note G)			
		<u>\$52,376</u>	<u>\$35,517</u>

See notes to financial statements

2,690

$$\begin{array}{r} 16,777 \\ - 8,100 \\ \hline 8,677 \end{array}$$

\$3 per share
Book value

Statement of Change in Working Capital

298a

DEFENDANTS' EXHIBIT F FOR IDENTIFICATION

Year ended December 31, 1968

	<i>In thousands</i>
Working capital at beginning of year, Recasted (Note A)	<u>\$15,203</u>
Additions	
From operations	
Net income	3,272
Provision for depreciation and amortization	<u>906</u>
	4,178
Stock issued in acquisition accounted for as a purchase	947
Stock sold under restricted stock purchase agreements	<u>1,010</u>
	<u>6,135</u>
Deductions	
Preferred stock called, including dividends in arrears	3,808
Increase in cost in excess of net assets of busi- nesses acquired	3,429
Net additions to property, plant and equipment	1,062
Increase in other assets and deferred charges	897
Decrease in long-term debt	539
Other changes, net	<u>514</u>
	<u>10,249</u>
Decrease in working capital	4,114
Working capital at end of year	<u><u>\$11,089</u></u>

Statement of Changes in Stockholders' Equity

299a

DEFENDANTS' EXHIBIT F FOR IDENTIFICATION

	4 1/4% Cumulative Preferred Stock Par Value \$100	Second Preferred Stock Carrying Amount \$1		Common Stock Par Value \$1	Additional Paid-in Capital	Retained Earnings
		Series A	Series B			
<i>In thousands</i>						
Balance at December 31, 1967 (as previously reported) . . .	\$2,939			\$ 417	\$ 435	\$ 8,771
Changes resulting from poolings of interests in 1969		\$66	\$29	102	(342)	5,768
Balance at December 31, 1967 (restated)	2,939	66	29	519	93	14,539
Net income						3,272
Sale of Common Stock to officers				13	997	
Acquisition of business (purchase)				10	937	
Preferred stock Dividend						(34)
Called, including \$869,000 dividends in arrears	(2,939)					(869)
Dividends of pooled businesses prior to acquisition						(131)
Four for one stock split in January, 1969				1,628	(1,628)	
Balance at December 31, 1968	<u>\$ —</u>	<u>\$66</u>	<u>\$29</u>	<u>\$2,170</u>	<u>\$ 399</u>	<u>\$16,777</u>

See notes to financial statements

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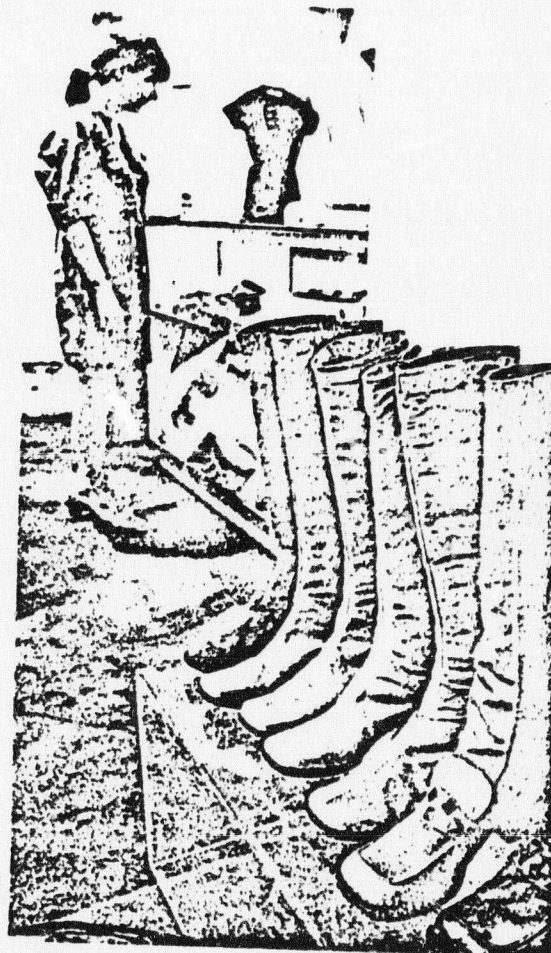
Note A — Principles of Consolidation and Acquisitions

The financial statements include, on a consolidated basis, the accounts of all subsidiaries after elimination of material intercompany accounts and transactions.

The Company acquired three businesses in 1968, all of which were accounted for as purchases. Their operations have been included in the statement of income from the dates of acquisition. In connection with nine businesses acquired between January 1, 1969 and March 24, 1969 the Company has paid cash, issued convertible and non-convertible debentures, issued 94,794 shares of convertible Second Preferred Stock and 425,395 shares of Common Stock. Six of these acquisitions were accounted for as poolings of interests and accordingly the accounts of these businesses have been included in the financial statements for 1968 and 1967 (restated). Net sales and net income of the pooled acquisitions included in the accompanying financial statements were \$27,143,000 and \$1,919,000 (1968) and \$25,371,000 and \$1,588,000 (1967), respectively.

As a result of certain of the aforementioned acquisitions, the Company may be obligated to issue an additional but indeterminate number of shares of its Common Stock, as explained further in Note I.

The Company is currently discussing possible acquisitions with several companies.



Note B — Restricted Stock Purchase Agreements

The Company has employment agreements with two officers to whom it has sold 13,000 shares of Common Stock (before the four for one stock split) at an aggregate price of \$505,000 to be paid over a three year period. Such stock had an aggregate market value at the sale dates of approximately \$1,010,000. Of the purchase price, \$168,000 is included in Other Receivables and the balance in Other Assets and Deferred Charges. The excess of the market value over the sales price is being charged against income over the periods covered by the employment agreements.

Note C — Inventories

Inventories are carried at the lower of cost or market, of which \$8,629,000 was calculated by the retail inventory method. The amount of the remaining inventory was determined principally on the first-in, first-out method.



DEFENDANTS' EXHIBIT F FOR IDENTIFICATION

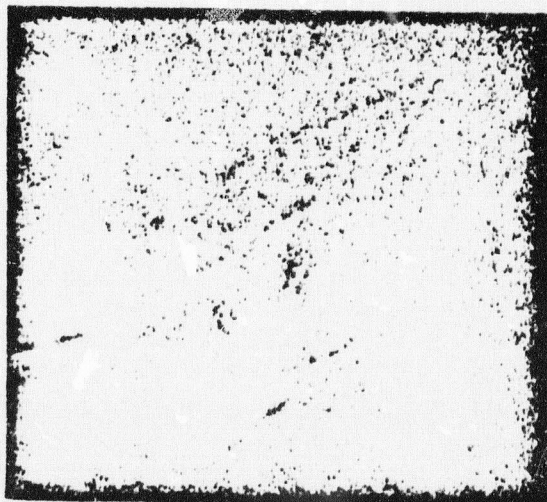
Note D — Long-Term Debt

Long-term debt as of December 31, 1968
consists of the following

5% Convertible Subordinated Debentures, payable in semi-annual installments of approximately \$30,000 starting in July, 1978	\$ 604,000
4% Note Payable, Series A, payable \$100,000 October 15, 1969 and \$412,000 October 15, 1970	512,000
4% Note Payable, Series B, payable in annual installments of \$100,000 and a final payment of \$399,000 on January 4, 1971	599,000
6% to 6 3/4% mortgage notes payable in annual installments totaling \$47,000, including principal and interest	425,000
Sundry notes payable to banks and others	315,000
	<u>2,455,000</u>
Less portion due within one year	266,000
	<u>\$ 2,189,000</u>

The 5% Convertible Subordinated Debentures are convertible after July 1, 1969 into Common Stock of the Company at \$23.125 a share and are subordinate to all current debt and all funded debt up to an aggregate of \$20,000,000. At December 31, 1968, 26,100 shares of Common Stock were reserved for such conversion.

Under the terms of agreements to which the Company is a party, dividends and other distributions (as defined) are limited, and maintenance of consolidated working capital at the greater of \$8,150,000 or 200% of consolidated funded debt is required. Accordingly, as of December 31, 1968, approximately \$2,900,000 of retained earnings was available for dividends and other distributions.



Note E — Common and Preferred Stock

In October, 1968, the stockholders approved (1) an increase in the authorized Common Stock from 1,000,000 shares to 10,000,000 shares and (2) the issuance of 1,000,000 shares of a new class of preferred stock (the Second Preferred Stock).

On November 26, 1968, the Board of Directors approved a four for one stock split effected in the form of a stock dividend. The additional shares were distributed on January 7, 1969, and are reflected in the accompanying financial statements.

On December 30, 1968 the Company called for redemption on February 18, 1969 all its outstanding 4 3/4% Cumulative Preferred Stock, at par plus dividends in arrears. (Cont.)

DEFENDANTS' EXHIBIT F FOR IDENTIFICATION

Note E — Common and Preferred Stock (Cont.)

Series A and B of the Second Preferred Stock are convertible at the rate of 4 shares and 3.636 shares, respectively (subject to antidilution provisions), of Common Stock for each share of Preferred Stock. Accordingly, 368,630 shares of Common Stock are reserved for such conversion. The Series A and B shares are redeemable at the option of the Company at their respective liquidation prices, \$76.00 and \$103.75, and also carry voting rights of 9/20 and 1/2 of one vote for each share, respectively.

Subsequent to December 31, 1968, the Company sold 260,000 shares of its Common Stock, including 7,800 shares issued as a commission, in a private placement at a discount from market value.



Note F — Stock Option Plans

On October 28, 1968 the stockholders approved the 1968 Qualified Stock Option Plan under which options for 80,000 shares of the Company's Common Stock were reserved for grant. The Board of Directors on November 26, 1968 adopted, subject to stockholder approval, a second 1968 Qualified Stock Option Plan under which 60,000 shares of Common Stock were reserved for grant. The terms of the aforementioned option plans and the previously approved 1965 Qualified Stock Option Plan provide that the option prices not be less than 100% of the fair market value of the Company's Common Stock on the grant date.

Options under the 1965 plan are exercisable to the extent of 50% two years after the grant date and, cumulatively, 25% on each of the two following anniversaries. Under the 1968 plans, the options may be exercised to the extent of 50% one year after the grant date and the remaining 50% two years after the grant date. All options terminate five years from the grant date. The following table summarizes the option transactions during 1968, after giving effect to the four for one stock split in January, 1969:

	Price per share	Shares Under Option			
		1965 Plan	1968 Plan	Second 1968 Plan	Total
Balance January 1, 1968	\$2.00	114,800			114,800
Granted	\$13.75-28.00	10,000	80,000	5,000	95,000
Canceled	\$2.00	(4,100)			(4,100)
Balance December 31, 1968		120,700	80,000	5,000	205,700

As of December 31, 1968 and 1967, 67,900 shares and 18,800 shares were available for future grants, and options for 86,100 shares and 57,400 shares were exercisable, respectively.

DEFENDANTS' EXHIBIT F FOR IDENTIFICATION

Note G — Commitments and Contingent Liabilities

As of December 31, 1968 the Company and its subsidiaries were obligated under 451 leases with terms expiring subsequent to December 31, 1971 for aggregate minimum annual rentals of \$5,196,000. Substantially all of the leases provide for additional rentals based on sales and for payment of real estate taxes, insurance, etc.

As a party to a 1958 loan agreement signed by a 50% owned company, Beck has agreed, in the event of default by that company, to purchase at net book carrying amount (approximately \$500,000) fixtures and equipment presently leased for approximately \$205,000 annually from the 50% owned company.

The Company was contingently liable under letters of credit outstanding of approximately \$793,000, as of December 31, 1968.

Approximately \$6,000,000 of net sales in 1968 were made under U.S. Government contracts subject to the Renegotiation Act. Management is of the opinion that the repayment of amounts, if any, as a result of renegotiation will not be material.

Note H — Federal Income Taxes

Federal income taxes are less than would otherwise be expected, principally because of the filing of individual tax returns by the newly pooled companies, exemption from taxation through April, 1970 of a subsidiary in Puerto Rico and investment credits of \$92,000 in 1968 and \$67,000 in 1967.

Note I — Net Income Per Share

Per share data is based on the average number of shares (after giving effect to the four for one stock split) of Common Stock outstanding each year, including shares issued in 1969 to acquire pooled businesses and after recognition of dividend requirements of \$586,493 in both years on the 4 $\frac{3}{4}$ % and Series A and B preferred stock (see Note A). The difference between pro forma per share data (assuming conversion of applicable preferred stock and debt and exercise of all outstanding stock options) and the aforementioned per share data is immaterial.

The Company may be obligated to issue an additional but indeterminate number of shares of its Common or Preferred Stock depending upon increments in future earnings of the acquired businesses and upon future market value of the Company's Common Stock.



DEFENDANTS' EXHIBIT F FOR IDENTIFICATION

Directors

Emanuel Alberts
President, Wilson-Sportwelt Shoe Companies

Robert Bricken
President, Bricken Bros. Inc.

Jerry Finkelstein
Chairman of the Board, Struthers-Wells Corp.

Harold V. Gleason*
President and Chief Executive Officer,
Franklin National Bank

Newton Glekel
Chairman of the Executive Committee

Maxwell H. Gluck
Chairman of the Board

Chas. F. McDevitt
President

Harold K. Ross
Vice President, Paige O'Brien Russell Inc.

Eugene F. Roth
Counsel to Delson & Gordon

Officers

Chas. F. McDevitt
President

Douglas R. Anderson
Vice President—Corporate Services

Isidore J. Goldzimer
Vice President

Thomas O. Pyle
Vice President and Operating Officer

Theodore Schlissel
Vice President—Corporate Development

Bertram H. Slater
Vice President—Finance and Secretary

Jesse Wachtel
Vice President—Footwear Group

Richard Meth
Treasurer

Andrew P. Andrew
Assistant Secretary

Bernard Kovitz
Assistant Secretary

* Served through March 31, 1969.

Principal Officers of Operating Companies

Denny Shoe Company
Edgar J. Hersom, President

Genarco, Inc.
Sam Forman, President
Eugene Trief, Secretary-Treasurer

Joseph Salon Shoes, Inc.
Z. Albert Joseph, Chairman of the Board
Victor Markin, President

Judy's Merchandising Corp.
Mrs. Marcia Israel, President
Lawrence Israel, Secretary-Treasurer

Latinas Footwear
Samuel Goldstein, President, Retail Division
Leo J. Yarfitz, President, Import Division

The Peddler's Inc.
Jan A. Roth, President

Disco-Fair
Sidney Moray, President
Aaron Shaw, Vice President & Merchandise Manager

Susan Ives Stores
Burton B. Brous, President
Edward Himler, Secretary

Watkins Furniture Company
Howard Silver, President
Louis A. Rippner, Executive Vice President

Wilson-Sportwelt Shoe Companies
Emanuel Alberts, President

305a

DEFENDANTS' EXHIBIT F FOR IDENTIFICATION

Transfer Agent
Morgan Guaranty Trust Company
New York, New York 10004

Registrar
Chemical Bank
New York, New York 10005

Independent Accountants
Ernst & Ernst
New York, New York 10005

Executive Offices
28 West 44th Street
New York, New York 10036

306a

DEFENDANTS' EXHIBIT F FOR IDENTIFICATION



EM:cr

AFFIDAVIT OF SCOTT E. MOLLEN IN OPPOSITION TO MOTION.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BRITTA DANIELS, as Trustee of the
Testamentary Trust under the Will
of HENRY DANIELS, deceased, and
BRITTA DANIELS individually,

75 CIV. 1928
(MEF)

Plaintiff,

-against-

ERNST & ERNST,

AFFIDAVIT IN
OPPOSITION

Defendant.

-----X
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

SCOTT E. MOLLEN, being duly sworn, deposes and
says:

1. I am a member of the Bar of this Court and of the
firm of LIPSIG, SULLIVAN, MOLLEN & LIAPAKIS, P.C., attorneys
for plaintiff in the above captioned action.

PRELIMINARY STATEMENT

2. This affidavit is submitted in opposition to
defendant Ernst & Ernst's motion for summary judgment on the
ground that the action is barred by the statute of limitations.
Plaintiff's opposition to said motion, as is more fully set
forth in plaintiff's Memorandum of Law submitted herewith, is
predicated upon the following:

I Federal Claims

A. IN CONSIDERING WHEN AN AGGRIEVED PARTY
DISCOVERED OR SHOULD HAVE DISCOVERED

AFFIDAVIT OF SCOTT E. MOLLEN IN OPPOSITION TO MOTION

FACTS CONSTITUTING FRAUD OR FACTS SUFFICIENT TO MAKE A REASONABLY PRUDENT PERSON SUSPICIOUS OF FRAUD, THE EXPERIENCE AND BARGAINING POSITION OF PLAINTIFF MUST BE CONSIDERED.

- B. A CAREFUL REVIEW OF THE FULL FACTUAL CONTEXT HEREOF MAKES EVIDENT THAT PLAINTIFF COULD NOT BE CHARGED WITH A CONSTRUCTIVE NOTICE OF FACTS CONSTITUTING THE FRAUDULENT CONDUCT ALLEGED HEREIN OR OF FACTS SUFFICIENT TO SUSPECT SAME.
- C. DEFENDANT ERNST & ERNST'S RECITATION OF THE FACTS HERE IS MISLEADING.
- D. AUTHORITIES RELIED UPON BY DEFENDANT ARE NOT ONLY INAPPLICABLE TO THE INSTANT CONTEXT, BUT IN FACT ARE SUPPORTIVE OF PLAINTIFF'S POSITION HEREIN.
- E. DEFENDANT'S ATTEMPT BY ITS MOTION FOR SUMMARY JUDGMENT TO FORECLOSE PLAINTIFF'S OPPORTUNITY TO HAVE HER DAY IN COURT MUST FAIL IN VIEW OF THE EXISTENCE OF GENUINE ISSUES OF MATERIAL FACT.

II State Claims

- A. SINCE PLAINTIFF'S FEDERAL CLAIMS MUST BE UPHELD, THIS COURT MAY MAINTAIN JURISDICTION OVER STATE CLAIMS UNDER THE DOCTRINE PENDENT JURISDICTION.
- B. STATE CLAIMS GROUNDED IN FRAUD AND BREACH OF CONTRACT ARE TIMELY UNDER THE PERTINENT STATUTES OF LIMITATIONS.

PLAINTIFF'S BACKGROUND

- 3. Plaintiff, BRITTA DANIELS, is the widow of

AFFIDAVIT OF SCOTT E. MOLLEN IN OPPOSITION TO MOTION

HENRY DANIELS and the Executrix of his Estate. At the time of Mr. Daniels' death, Mr. & Mrs. Daniels and their infant son, now seven years old, were residents of California and Mrs. Daniels and her son continue to reside in California.

4. Defendant Ernst & Ernst is a partnership of independent certified public accountants, which was retained by Beck Industries Inc. ("Beck") to conduct audits and render reports as to Beck's financial condition for the fiscal years 1968 and 1969.

5. In July 1969, Mr. Daniels, who was the sole stockholder of Pomett Manufacturing Co. d/b/a Hartogs of California and Swirts Inc., d/b/a Hartogs Inc. entered into an agreement whereby Mr. Daniels sold his entire holdings in the aforementioned companies to Beck in exchange for Beck common stock valued at closing at approximately \$4.2 million dollars.

6. Less than two years thereafter, Beck filed a petition for reorganization under Chapter 10 of the Federal Bankruptcy Act. As a result thereof, the bulk of the assets which Mr. Daniels had intended to preserve for the benefit of his infant son and wife, have been lost.

7. As is more fully set forth in Mrs. Daniels' affidavit, annexed hereto as Exhibit "A", Mr. Daniels was a completely untutored and unsophisticated individual when it came to business matters. See also pertinent excerpts of Mrs. Daniel's deposition annexed hereto as Exhibit "B". Moreover, Mrs. Daniels

AFFIDAVIT OF SCOTT E. MOLLEN IN OPPOSITION TO MOTION
was even less sophisticated as to business affairs as is also
evident from Exhibit "A" and pertinent excerpts of her
deposition annexed hereto as Exhibit "C".

8. A review of Mrs. Daniels aforecited affidavit
(Exhibit "A") and deposition (Exhibit "B") reveals that
Mr. Daniels may most accurately be characterized as an
individual who was of an "artistic" background rather than of
a "business" background. Specifically,

- a. Mr. Daniels possessed only a high school diploma.
- b. Never attended college.
- c. Subsequent to high school followed an "acting" career.
- d. Was primarily a "Color Coordinator" and "Designer".
- e. Left the "business" aspects of running the firms to his father, Harry Hartog Daniels, and his accountants.
- f. Never was a director or officer of any company apart from his own.
- g. Never made business investments in any other companies apart from occasional stock purchases with the guiding hand of a stock broker.
- h. Never regularly read publications such

AFFIDAVIT OF SCOTT E. MOLLEN IN OPPOSITION TO MOTION
as "The Wall Street Journal", "New York
Times", "Woman's Wear Daily", "Forbes,
"Business Week", "Fortune", or "Dunn's
Review".

- i. Between approximately 1969 and December
1973, suffered from arterial sclerosis.

9. As a review of Mrs. Daniels' affidavit and deposition
(Exhibit "C") reveals, similarly Mrs. Daniels' background is
as follows:

- a. Mrs. Daniels was an elementary school teacher
in Sweden.
- b. After her marriage to Mr. Daniels, her
sole occupation was as a housewife and mother.
- c. She never became involved in the business.
- d. She never made any investments in any
companies.
- e. She never read publications such as "The
Wall Street Journal", "New York Times",
"Woman's Wear Daily", "Forbes", "Business
Week", "Fortune" or "Dunn's Review".
- f. Although she occasionally read the "Los
Angeles Times", she was not a regular
reader of such paper and certainly never
followed the business pages.

AFFIDAVIT OF SCOTT E. MOLLEN IN OPPOSITION TO MOTION

10. Defendant has attempted to portray Mr. & Mrs. Daniels as sophisticated investors or business people*. The inaccuracy of such characterization is evident from the foregoing illumination of the aforementioned personal backgrounds, reference to which was completely omitted from defendant's moving papers.

*Rather than set forth the full dialogue at pages 39-40 of Mrs. Daniels deposition, defendant merely characterized Mrs. Daniels' statement thereat as follows: "That she was sure that Mr. Daniels read financial publications". Defendant's Statement Pursuant to General Rule 9(g) at paragraph 10. The following is an accurate reflection of the relevant dialogue at page 39-40:

Q. Did Mr. Daniels read it (Los Angeles Times) while he was alive?

A. I do not know.

Q. Do you know whether Mr. Daniels read the "Wall Street Journal"?

A. I do not know.

Q. Do you know whether he read during this period the "New York Times"?

A. No, I do not know.

Q. Do you know whether he read "Woman's Wear Daily"?

A. I do not know.

Q. Do you know whether he read "Home Furnishings Daily"?

A. I do not know.

Q. Do you know whether he read any financial publications, such as "Forbes" or "Business Week", "Fortune", "Dunn's Review" or anything of that kind?

A. I do not know. I am sure he did.

Thus, defendant has misleadingly extracted from the foregoing full context that Mrs. Daniels was "sure" Mr. Daniels read financial publications. Plaintiff will not comment further on the inaccuracy of such representation.

AFFIDAVIT OF SCOTT E. MOLLEN IN OPPOSITION TO MOTION

11. Moreover, Mr. Daniels conducted the negotiations which culminated in Beck's purchase of his companies essentially unassisted by counsel*.

*Defendant states that James Brown, a long-time lawyer for Mr. Daniels as well as Hartogs participated in the negotiations while on Mr. Daniels' behalf citing the Daniels' deposition at 9-11, 20. Mrs. Daniels' testimony on page 9 is limited to stating that she knows James Brown and that he is a lawyer. The testimony at page 10 is limited to responding affirmatively to the question "Did he represent Hartogs as a Lawyer?" and that Mr. James Brown represented her husband. On page 11 Mr. McGuire, defendant's counsel, defined "represents" to mean "did some legal work" and elicited the fact that Mr. Brown handled Mr. Daniels' Estate. On page 20, in response to Mr. McGuire's carefully phrased question, "Did Mr. Brown participate in the negotiations?", Mrs. Daniels answered, Yes.

Mr. McGuire never inquired as to Mr. Brown's specialty if any and immediately dropped his line of questioning and never inquired as to the extent of Mr. Brown's "participation". Thus the deposition leaves unanswered whether Mr. Brown spent five minutes or five hours in connection with this negotiation or whether or not he played an active significant role in said negotiations. I am informed by my client that the answer to said questions, had defendant's counsel asked, would have been that Mr. Brown was essentially an Estate lawyer who played a completely insignificant role in the subject negotiations. Thus, defendant has again attempted to improperly utilize an extremely limited response to one of its carefully phrased questions to paint a picture of a sophisticated wheeler-dealer making each move with the assistance of sophisticated counsel. It is only by a grotesque distortion of the facts that such picture could materialize. Such machinations are antithetic to the interests of justice and our system of jurisprudence.

AFFIDAVIT OF SCOTT E. MOLLEN IN OPPOSITION TO MOTION

12. Thus, as is more fully set forth in plaintiff's Memorandum of Law, the contrast between the backgrounds involved herein and the far more sophisticated backgrounds involved in Briskin v. Ernst and Ernst, 398 F.Supp. 997 (C.D.Cal. 1975) and the other decisions relied upon by defendant could hardly be more striking.

INADEQUATE NOTICEGlekel Affidavit

13. Presumably, defendant has submitted the affidavit executed by Newton Glekel, the former chairman of the Executive Committee of the Board of Directors of Beck and former Chairman of the Board to support its contention that Mrs. Daniels should be charged with actual or imputed knowledge of the alleged fraud or sufficient to suspect said fraud. For the reasons hereinafter set forth, said affidavit merely demonstrates that Mr. Glekel, and perhaps the sophisticated New York business community, possessed a keen insight into Beck's financial condition.

14. Specifically, Mr. Glekel, after reciting Beck's problems with a debenture offer on the American Stock Exchange, cites in his Exhibit "A", examples of comment in the public press. Particularly salient is the fact that said exhibit contains two (2) articles both reported in New York based newspapers, the first in a one column article which appeared on page two of the Wall Street Journal, column 4 and the

AFFIDAVIT OF SCOTT E. MOLLEN IN OPPOSITION TO MOTION
 other one column article "deeply embedded" on page 29 column 5
 of the New York Times*. As previously set forth herein, both
 were in New York-based newspapers which plaintiff, who lived in
 California, testified she did not read and both were written
 in the summer of 1970, during a period when Mrs. Daniels was
 home with a ten month old baby and caring for a husband ill
 with what developed to be a fatal case of arterial sclerosis.

15. Thereafter, Mr. Gleckel cites a lawsuit commenced
 by former stockholders of A. K. Salz Tannery, Inc. and
 publicity relating thereto. First, as a review of Gleckel's
 Exhibit "B" indicates, the complaint is absolutely devoid of
 any reference whatsoever to any wrongful conduct on the part
 of Ernst & Ernst. It did name Beck and a plethora of other
 financial institutions. Thus, plaintiffs therein never asserted
 a cause of action against the accounting firm for playing
 a wrongful role therein. Second, said suit arose from specific
 representations and specific agreements relating to the
 A. K. Salz Tannery, Inc. acquisition. Third, the public
 comment set forth in Glekel Exhibit "C" consists of one, one
 column article "buried" on page 16 of the Wall Street Journal.

16. Mr. Gleckel then refers to a lawsuit commenced
 against himself and the former president of Beck. Here

*Plaintiff most respectfully points out that even an
 article one inch by one inch may appear to be prominent,
if carefully centered on a completely blank page.

AFFIDAVIT OF SCOTT E. MOLLEN IN OPPOSITION TO MOTION

Mr. Glekel apparently asserts notice is to be gleaned from a suit that did not even name Beck, let alone their accounting firm. Similarly, public comment as set forth in Glekel Exhibit "E" consisted of one, one column article appearing on page 4 of the Wall Street Journal.

17. Further, Mr. Glekel in his Exhibit "F" cites "representative samples" of public comment as to Beck's financial difficulties during the July 1970 to May 1971 period. Among the eighteen (18) articles cited, not one article is from any publication other than the New York Times or the Wall Street Journal. Not one article is a page one article of either. Included are three inch articles "buried" on such obscure pages as 45, 44, 53, 71, 74, etc. Particularly noteworthy again is the complete absence of any reference that accountants may have participated in wrongful conduct.

18. Finally, Mr. Glekel in Exhibit "H" sets forth copies of two (2) more one column articles relating to the reorganization. One appeared on page 14 of the Wall Street Journal and the other of page 43 of the New York Times. In any event, plaintiff certainly does not deny knowledge of such reorganization. However, neither the fact of the reorganization nor either of these two articles could lead one to conclude that a 10(b)(5) action might lie against the

AFFIDAVIT OF SCOTT E. MOLLEN IN OPPOSITION TO MOTION
accountants as distinguished from the company*.

McGuire Affidavit

19. The affidavit of Bartlett H. McGuire, Esq. counsel to defendant, in essence asserts that he has supervised a review of articles similar to those cited in Mr. Glekel's affidavit, but which appeared in the California press. Apparently his review uncovered three articles during approximately one particular week, July 14-23, 1970, and two which appeared during one week, May 22-28, 1971. Again, not one of these articles suggests wrongful conduct on the part of the independent accounting firm. Again, not one of these literally tiny articles appeared on page one of the Los Angeles Times. Nor for that matter, at page 2, 3 or 4. Each was tucked away in the Business & Finance Section of the paper. Two of them consisted of one single paragraph articles (7/14/70 and 5/22/71). The others are hardly more extensive. Again, defendant has introduced no proof that Mr. or Mrs. Daniels regularly read

*Plaintiff further points out that defendant has never presented any evidence that Mr. or Mrs. Daniels ever read the New York Times or the Wall Street Journal. With all due respects to both publications, there is no evidence that such reading is incumbent upon all California residents. Indeed to assume same would be most presumptuous and indicative of the myopic and self inflated importance which all too many New Yorkers thoughtlessly attribute to life in this City. Plaintiff most respectfully suggests that page 43 or page 56 of the New York Times would be insufficient notice even to a New Yorker and thus, as to a high school graduate, former actor and artist residing in California, it certainly would be a question to be resolved by the trier of the facts.

AFFIDAVIT OF SCOTT E. MOLLEN IN OPPOSITION TO MOTION
these papers. (There is absolutely no proof that Mr. Daniels
ever read this paper and there is only the statement that
Mrs. Daniels sometimes read it, but certainly never followed
the business section.)*

Distinction Between Wrongful Conduct on the
Part of Beck, and Wrongful Conduct on the
Part of the Accountants

20. Although defendant's motion papers are replete with
references to Beck's financial difficulties, the sole item
contained therein which relates to possible wrongful conduct
by the company's independent auditors is a reference to the
Briskin v. Ernst and Ernst, supra, litigation which did not
commence until the summer of 1973. Plaintiff most respectfully
suggests that this is the only evidence defendant's have cited
which should alert a reasonable prudent person, considering
plaintiff's background, that not only has Beck stock lost its
value because the general stock market declined during the 1968-
1971 period and Beck personnel engaged in wrongful conduct, but
also because the independent auditors, Ernst & Ernst, also know-
ingly participated in wrongful conduct.

21. The fact that a stock declines in a "bear" market (or
even in "bull" market) does not automatically place a person on
notice that he possesses a 10(b)(5) cause of action against anybody.

22. Plaintiff most respectfully suggests the fact that
lawsuits are commenced against the company alleging mis-

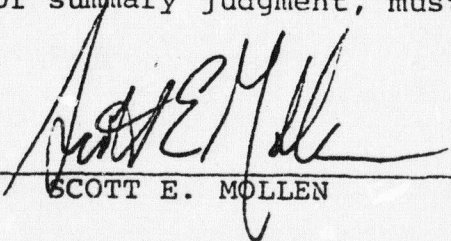
*Indeed, not only has Mr. McGuire's review not unearthed any articles
which imply knowledge of wrongdoing by the independent accounting firm
but his review discloses that in 1970 articles which in any way
related to Beck happened to appear on only 4 of 365 days and only
on 2 of 365 days of 1971. Thus, on only 6 of the 730 days during
the period 1970-71 could one have found any article regarding
Beck. As previously set forth, one would have had quite a task,
locating such articles even if one had the foresight and knowledge
to know on precisely which days the articles would appear. (Again,
none of the articles implied wrongful conduct by the accounting
firm.)

AFFIDAVIT OF SCOTT E. MOLLEN IN OPPOSITION TO MOTION representations in the financial statements, even assuming arguendo that a person knew of such suits (all evidence herein is to the contrary! See pertinent Daniels' deposition excerpts annexed hereto as Exhibit "D"), should not automatically result in knowledge that one has a claim against an independent accounting firm. Ironically, if defendant's position herein was upheld, the result would be that all plaintiffs would be compelled to name accounting firms as defendants whenever they believed company personnel may have engaged in wrongful conduct leading to inaccurate or misleading financial statements, regardless of any evidence that the accountants knowingly participated.

23. Plaintiff submits the foregoing would be absurd. Of course, plaintiff was aware the company had problems. As is evident from her affidavit (Exhibit "A"). she had no knowledge of culpability on the part of the accounting firm until December of 1973.

CONCLUSION

24. In view of the full facts and circumstances herein, the question of whether the facts herein are such that knowledge sufficient to trigger the pertinent statute of limitations should be charged to this particular plaintiff, is a question of fact. Thus, the instant motion for summary judgment, must be denied in all respects.


SCOTT E. MOLLEN

Sworn to before me this

11th day of January, 1977

SHEPARD LANE
Notary Public, State of New York
No. 30-2247525
Qualified in Nassau County
Commission Expires March 30, 1977



EXHIBIT A, ANNEXED TO AFFIDAVIT OF SCOTT E. MOLLEN--AFFIDAVIT
OF BRITTA DANIELS IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

BRITTA DANIELS, as Trustee of the
Testamentary Trust under the Will
of HENRY DANIELS, deceased and
BRITTA DANIELS individually,

Plaintiff,

-against-

AFFIDAVIT

ERNST & ERNST,

75 Civ. 1829 (MEF)

Defendants.

----- x

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

BRITTA DANIELS, being duly sworn, deposes and says:

1. I am the widow of Henry Daniels, deceased, and the Executrix of his estate and am the owner and successor in interest to the stock of Henry Daniels consisting of stock in Beck Industries Pomett Manufacturing Co. d/b/a Hartogs of Calironia and Swirts Inc. d/b/a Hartogs Inc.

2. I am submitting this affidavit in opposition to defendant's motion for summary judgment based upon their assertion that I or my deceased husband reasonably should have known of facts which should have caused me to suspect back prior to April 15, 1972 that defendant had engaged in the fraudulent acts alleged herein.

3. In approximately July of 1969 my husband entered into an agreement whereby he sold his entire holdings of the aforementioned companies, which he had started and built up from

EXHIBIT A, ANNEXED TO AFFIDAVIT OF SCOTT E. MOLLEN
"scratch", to Beck Industries in return for Beck Industries' stock. The negotiations as to said purchase were primarily handled by my husband without the benefit of his attorney James Brown who did not possess particular expertise in this area. Six months later Beck stock dropped from \$42.50 to \$4.50 on the American Stock Exchange and on May 27, 1971 Beck filed a petition for reorganization under Chapter 10 of the Federal Bankruptcy Act. Thus, in essence, most of my husband's assets, assets which he wanted to preserve for the benefit of our now 7 year old son and me, were completely wiped out.

4. As I shall set forth later herein, neither I nor my husband ever learned of, or even suspected, that Beck's accountants, Ernst & Ernst, might have been involved in fraudulent practices in connection with the financial statements of Beck Industries until the latter part of December 1973. I am able to pinpoint this period because of the death of my husband on December 21, 1973. Although I certainly had reason to suspect that Beck personnel had misrepresented Beck's financial prospects, there was never any reason to believe their independent accounting firm actually played a wrongful role in this situation.

5. My attorneys have informed me that my husband's background and my background are particularly germane to the issue to be decided by this Court.

6. As is evident from my testimony during my deposition, my deceased husband was more the "artist" than the "business man." He never even attended college. After high school he went into acting. Sometime approximately 25 to 30 years before he passed away, he founded the aforementioned companies, Pomett Manufacturing

EXHIBIT A, ANNEXED TO AFFIDAVIT OF SCOTT E. MOLLEN Co. and Swirts Inc. As I testified, his primary activity within the company involved designing materials. He was the color coordinator and he designed patterns for the shirts that were manufactured in his factory.

7. Thus, he was primarily involved in the artistic aspects of the business. Although he was partly a salesman, he really relied on salesmen working for him and his accountants to supervise the "business aspects" of running the business after the death of his father, Henry Hartog-Daniels in approximately 1959, who had always supervised the "business" end of the operation.

8. During the period of our marriage he was never a director or officer of any company other than his own. My husband never made business investments in other companies apart from an occasional purchase of stock brought to his attention and purchased on the advice of a stockbroker (I never had any investments of my own during the period of our marriage).

9. As to my own background, I was an elementary school teacher in Sweden. After I met my husband in approximately 1964, my sole occupation was as a housewife and I never became involved in the business.

10. Although during the period 1968 to present I would receive the Los Angeles Times, I never regularly read such paper. Moreover, as I testified during my deposition, I certainly did not read publications as The Wall Street Journal, New York Times, Women's Wear Daily, Forbes, Business Week, Fortune, Dunn's Review or other similar publications. Moreover, I don't believe my husband read such publications. Of course I am sure at some time he must have looked at an issue of one of these magazines during the period 1968 to his death, but he certainly

EXHIBIT A, ANNEXED TO AFFIDAVIT OF SCOTT E. MOLLEN

was not a regular reader by any means. In fact, during the period of 1969 through my husband's death, my husband was extremely ill and was forced to curtail whatever business related activities he was engaged in. He was then suffering from arterial sclerosis which in fact was the cause of his death in December of 1973.

11. While my husband was still alive we were aware that representations made by Beck personnel as to Beck's "bright" financial prospects were unfounded and inaccurate. By approximately December of 1971 when Beck stock dropped so precipitously, we certainly suspected that the statements made by Beck personnel as to Beck's being a "great company" with excellent growth potential were inaccurate. However, I am aware that stocks go up and stocks go down and such market activity is not necessarily attributable to false representations of financial condition. When my husband saw that Beck went into reorganization, he stated to me that the aforementioned representations made by Beck were not true and that "we were taken". However, he never stated nor even implied in any way that he thought or suspected the independent accounting firm retained by Beck, i.e., Ernst & Ernst, the defendant herein, played a wrongful role in the misrepresentation. In fact, to my knowledge, my husband never met with any personnel of the defendant nor did he ever receive any correspondence or

EXHIBIT A, ANNEXED TO AFFIDAVIT OF SCOTT E. MOLLEN

or other communications from the defendant (apart of course from receiving a Beck annual report). The only representations that were personally made to him were representations made by personnel of Beck Industries and those he viewed in the annual report. Thus, we had no reason to suspect wrongful conduct on the part of the independent accounting firm.

12. As previously mentioned, my husband passed away on December 21, 1973. I recall hearing right after my husband's death about a law suit that charged the accounting firm, Ernst & Ernst, with playing a wrongful role in this situation. This information was brought to my attention sometime between the date of my husband's death and January 1, 1974. I distinctly remember that it was after my husband's death and before New Year's Day. As I have previously stated, this was the very first time that I ever realized that perhaps my son and I might seek redress against this accounting firm based on their wrongful conduct herein.

Sworn to before me this

day of January, 1977



Britta Daniels

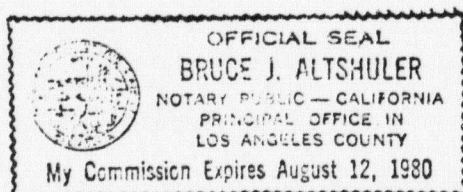


EXHIBIT B, ANNEXED TO AFFIDAVIT OF SCOTT E. MOLLEN--
DEPOSITION OF MRS. BRITTA DANIELS.

Daniels

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A. I was married to him seven years. He died
1973. So, that was 1964.

MR. MOLLEN: Approximately '65 or '66?

THE WITNESS: Yes.

Q. When you married Mr. Daniels, you lived in
Beverly Hills; is that right?

A. Yes.

Q. Would you -- do you know where he was
educated?

A. He went to the Choate School, but outside of
New York. I know he was a classmate with Kennedy --
not a classmate, they had a room together.

Q. A roommate, or mate?

A. Yes, they were roommates.

Q. Did he go to college?

A. No, after that Louis B. Mayer found him in
the restaurant and put him under contract with Metro-
Goldwyn Mayer.

Q. What did he do with Metro-Goldwyn Mayer?

A. He was a big actor there. He starred in
quite a few pictures.

Q. Do you know when he first became involved
with the company that is called Hartogs?

A. Not exactly.

EXHIBIT B, ANNEXED TO AFFIDAVIT OF SCOTT E. MOLLEN

Daniels

6

1
2 Q Do you know approximately?

3 A About 25, 30 years before he died.

4 Q Could you tell us what that company, or
5 those companies are? That is, or those companies are?

6 A No.

7 Q Do you know the nature of the business?

8 A Yes.

9 Q What is the nature of the business?

10 A He designed materials. He was a color
11 coordinator and he designed the patterns for the shirts,
12 and they made the shirts in his factory. The retailers
13 all over the country bought it from him, and he had
14 salesmen working for him.

15 Q Did he found the business, did he begin the
16 business?

17 A Yes.

18 Q Was he the sole stockholder of the business?

19 A Yes.

20 Q Where was the business located?

21 A Downtown Los Angeles, Los Angeles Street.

22 Q This is one manufacturing plant where the
23 shirts were made?

24 A Yes.

25 Q Were his offices there as well, at the plant?

EXHIBIT B, ANNEXED TO AFFIDAVIT OF SCOTT E. MOLLEN
Daniels

12

MR. McGUIRE: Would you mark for
identification a 2-page letter from Maxwell M.
Perlberg to Mr. James Brown, dated June 19, 1969,
with six attachments.

(2-page letter from Maxwell M.
Perlberg to Mr. James Brown,
dated June 19, 1969, with six
attachments, marked Defendant's
Exhibit A for identification,
as of this date.)

BY MR. McGUIRE:

Q I draw your attention, Mrs. Daniels, to
what has been marked as Page A-9. After looking at that
page, which purports to list the officers and directors
of Ponett and Swirts, is your recollection refreshed as
to whether or not Mr. Brown was an officer and director
of those corporations?

A No.

Q Is your recollection refreshed as to whether
Mr. Altschuler was an officer or director?

A No.

Q You don't know?

A No.

Q Do you know the nature of the work which
Mr. Daniels performed as president of Hartogs?

A He was the designer, he was the coordinator

EXHIBIT B, ANNEXED TO AFFIDAVIT OF SCOTT E. MOLLEN

Daniels

13

of colors, he was the designer of the shirts, and he
also partly sold.

Q I'm sorry, I didn't understand you.

A He partly was a salesman. I mean, he had
salesmen working for him, but also at the big shows he
sold, himself.

Q Do you know who the accountants were for
the company?

A Yes.

Q Who?

A Clarence Rainess.

Q Did they also perform accounting work for
Mr. Daniels personally?

A Yes.

Q Did they also perform accounting work for
you personally, or have they ever done so?

A Yes.

Q Did they perform accounting work for Mr.
Daniels during the period 1969 through 1973?

A Yes.

Q Was Mr. Daniels employed with any other
business during the period 1969 through 1973?

A No.

Q Did Hartogs ever acquire any other companies

EXHIBIT B, ANNEXED TO AFFIDAVIT OF SCOTT E. MOLLEN

Daniels

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MR. MOLLEN: Let the record reflect

Mrs. Daniels is pointing to the bottom of the two signatures, the one directly above the typed name "Henry Daniels."

Q Have you seen a copy of this exhibit before?

A Yes.

Q Did you see it, or a copy of it, at or about the time it was executed?

A No.

Q After Mr. Daniels sold his stock to Beck, did he continue to be employed with Hartogs?

A Yes.

Q In what position?

A As a president.

Q How long did he continue to be employed in that position?

A Until he died.

Q You said that he died in 1973. Do you remember the date?

A The 21st of September in 1973.

Q During the period from your marriage to Mr. Daniels until his death, was he ever a director or officer of any corporation other than Hartogs?

A No.

EXHIBIT B, ANNEXED TO AFFIDAVIT OF SCOTT E. MOLLEN

Daniels

16

MR. MOLLEN: We are excluding Swirts
and Pomett, I assume.

MR. McGUIRE: Right. When I refer to
Hartogs, I mean to include Swirts and Pomett.

Q. Was Hartogs his sole source of income during
the time you were married to him?

A. Yes.

Q. Did he invest in the securities of any other
corporation?

A. No.

Q. Did you?

A. No.

I have to take that back. He did do some
investments on the stock market.

MR. MOLLEN: Just for the record, so
it's clear, if the question is did he make other
investments, Mrs. Daniels, I believe, is trying
to state that he had a stock broker and he dabbled,
through the stock broker, occasionally in the
market. If the question is whether he had
investments in the sense of heavy investments of
acquiring control or substantial position of
other particular companies, then I think her
answer would be no.

EXHIBIT B, ANNEXED TO AFFIDAVIT OF SCOTT E. MOLLEN

of this period — are talking about, ever picked up a newspaper.

MR. McGUIRE: Will you let her answer it subject to connection?

MR. MOLLEN: I will let her answer a properly phrased question. I will direct her not to answer because it's a compound question that is not clear.

Q During the period from 1968 to the present, have you ever subscribed to the Los Angeles Times?

MR. MOLLEN: By "subscribe," do you mean ever purchase, or do you mean have an actual subscription where they deliver it to your home?

Q Have a subscription where they deliver it.

A Yes.

Q Was that throughout the period from 1968 to the present?

MR. MOLLEN: If you remember.

Q If you remember.

A Yes.

Q Have you, throughout that period, regularly read the Los Angeles Times?

A No, sir, sometimes I don't read it.

Q Did Mr. Daniels read it while he was alive?

EXHIBIT B, ANNEXED TO AFFIDAVIT OF SCOTT E. MOLLEN

1 A. I don't know.

2 Q. Do you know whether Mr. Daniels read The
3 Wall Street Journal?

4 A. I don't know.

5 Q. Do you know whether he read, during this
6 period, The New York Times?

7 A. No, I don't know.

8 Q. Do you know whether he read Womens Wear Daily?

9 A. I don't know.

10 Q. Do you know whether he read Home Furnishings
11 Daily?

12 A. I don't know.

13 Q. Do you know whether he read any financial
14 publications, such as Forbes or Business Week, Fortune,
15 Dun's Review, or anything of that kind?

16 A. I don't know. I am sure he did

17 Q. Did you, from the period 1969 through July
18 of 1970, from time to time check to see what price Beck
19 stock was selling at?

20 A. No.

21 Q. Do you know whether Mr. Daniels did?

22 A. I don't know. My husband was a very ill man.

23 Q. Did you ever check to see what price Beck
24 stock was selling at during that period?
25

EXHIBIT B, ANNEXED TO AFFIDAVIT OF SCOTT E. MOLLEN

Daniels

4

after that I went to the university and I became a school teacher. And after that, I taught school in Russia in the Swedish embassy. After that, I came here.

Q Did you take any advance degrees at the university, or are you a graduate of the university? What university?

A You mean in this country?

I have not had any -- I was an elementary school teacher and that was it.

Q In terms of your education, was that in Sweden?

A Yes.

Q What university did you attend?

A It's a school where -- they only -- you just become teachers, it's just for teachers.

MR. MOLLEN: Did that school have a name?

THE WITNESS: Harnosand. To say it in English is nearly impossible, but Harnosand is the town.

Q When you came to the United States, did you work here, did you teach here?

A No, I didn't.

Q When did you marry Mr. Daniels?

EXHIBIT B, ANNEXED TO AFFIDAVIT OF SCOTT E. MOLLEN

Daniels

8

question or merely attempting to state facts.

We are happy to come here and listen to you state facts, if that is what you would like to do. But if you have questions, I wish you would ask them in a proper question form.

MR. McGUIRE: Let me rephrase the question then.

Q Was Mr. Daniels the sole stockholder of a corporation called Pomett Manufacturing Corporation?

A Yes.

Q Was he the sole stockholder of a corporation called Swirts, Inc.?

A Yes.

Q Do you know the difference between the business conducted by those two corporations?

MR. MOLLEN: I don't understand what you mean by the difference of the business.

Q Fine.

What business was conducted by Pomett Manufacturing Corporation?

A I don't know.

Q What business was conducted by Swirts, Inc.?

A I don't know.

Q Did both of those corporations do business

BEST COPY AVAILABLE

EXHIBIT B, ANNEXED TO AFFIDAVIT OF SCOTT E. MOLLEN

Daniels

under the name of Hartogs?

A. Yes.

Q. Was it Hartogs which engaged in the shirt manufacturing business which you have described?

A. Yes.

Q. Were you ever involved in the business of Hartogs?

A. Never.

Q. Were you an officer or director?

MR. MOLLEN: I would ask you to clarify what you mean by "involved."

Q. Were you an officer or director of the business?

A. No.

Q. Did you ever participate in the operations of the business?

A. No.

Q. Other than Mr. Daniels, who were the officers of the corporation?

A. I don't know.

Q. Are you acquainted with Mr. James J. Brown?

A. Yes.

Q. Is he a lawyer?

A. Yes.

EXHIBIT B, ANNEXED TO AFFIDAVIT OF SCOTT E. MOLLEN

Daniels

19

Q Did he deal with any other brokers that you know of?

A No.

Q Did Mr. Haft advise Mr. Daniels on his investments?

A I don't know.

Q Did you have any investments of your own during the period when you were married to Mr. Daniels?

A No.

Q Do you know, generally, the magnitude of his investments through these brokers?

A No.

Q Was it more than \$100,000?

MR. MOLLEN: Is there a particular time period we are talking about? I don't know if we are talking cumulatively on a given transaction over a year.

Q At any given time, do you know whether his investments through these brokers totalled more than \$100,000?

A I know at sometime, yes.

Q Do you know whether it exceeded, at any given time, \$500,000?

A I don't know.

EXHIBIT B, ANNEXED TO AFFIDAVIT OF SCOTT E. MOLLEN
Daniels

39

of this period we are talking about, ever picked up a newspaper.

MR. McGUIRE: Will you let her answer it subject to connection?

MR. MOLLEN: I will let her answer a properly phrased question. I will direct her not to answer because it's a compound question that is not clear.

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Q Have a subscription where they deliver it.

A Yes.

Q Was that throughout the period from 1968 to the present?

MR. MOLLEN: If you remember.

Q If you remember.

A Yes.

Q Have you, throughout that period, regularly read the Los Angeles Times?

A No, sir, sometimes I don't read it.

Q Did Mr. Daniels read it while he was alive?

EXHIBIT B, ANNEXED TO AFFIDAVIT OF SCOTT E. MOLLEN

Q Did any credit from a firm to go on with his business because of Beck's reputation at that time.

A Did he repeat that he was taken?

A Yes.

Q Did he repeat that Beck's financial condition, or did he say Beck's financial condition had not been as good as it had been represented to him in 1969?

A Yes.

Q Have you ever head of any lawsuits, other than your own, being filed against Beck which allege that the financial statements had been misrepresented prior to the time of the bankruptcy?

A I heard the courts -- appointed lawyers of the court were having a suit.

Q The trustee in bankruptcy, you mean?

A Yes.

Q Have you ever heard of any other lawsuits making the kind of allegation you have described?

A Yes.

Q What other lawsuit or lawsuits have you heard of?

A I don't know what kind of lawsuits.

Q Who brought them? Do you know who filed the lawsuits?

EXHIBIT B, ANNEXED TO AFFIDAVIT OF SCOTT E. MOLLEN
Daniels

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A. Sloane's.

Q. When was that filed, do you know?

A. I have no idea.

Q. Did you ever hear of a lawsuit filed by
shareholders of a company called Salz Tenery?

A. No.

Q. Did you ever hear of a lawsuit filed by a
man named Harold Ross?

A. No.

Q. Do you know whether your husband was aware
of either of those lawsuits, of any lawsuit of that kind?

A. I know he wasn't aware of any lawsuits.

Q. In approximately August of 1970, did you
learn that two of Beck's subsidiaries, one called Liebs
and the other called The Peddlers, filed petitions under
Chapter 11 in bankruptcy?

A. No.

Q. Do you know whether Mr. Daniels learned of
that fact at some time around August of 1970?

MR. MOLLEN: I though she testified

he didn't know.

Q. This is not a lawsuit, this is just petitions
in bankruptcy by subsidiaries of Beck. Do you know
whether he knew that?

EXHIBIT B, ANNEXED TO AFFIDAVIT OF SCOTT E. MOLLEN

.. Daniels

48

A. No.

Q. During the period from 1969 until 1971, when Beck went into bankruptcy, did you ever discuss Beck's financial problems with Mr. Brown?

A. Never.

Q. Do you know whether your husband did?

A. I don't know.

Q. During that period, did you ever discuss Beck's financial problems with representatives of Bache or Mr. Holtz, is that the name?

A. Holtz?

Q. The man from Blair.

MR. MOLLEN: Haft.

Q. Do you know whether Mr. Daniels did?

A. No.

Q. Did you, during that time period, discuss Beck's financial problems with anybody other than Mr. Daniels?

A. No.

Q. Do you know whether he did?

A. I don't know.

Q. I believe you have testified as to the lawsuit brought by shareholders of Sloane. Do you know any of the former shareholders of W.N.J. Sloane of Beverly

OPINION BY FRANKEL, D.J.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----X

BRITTA DANIELS, as Trustee of the
Testamentary Trust under the Will
of HENRY DANIELS, deceased, and
BRITTA DANIELS individually,

Plaintiff,

-against-

ERNST & ERNST,

Defendant.

75 Civ. 1829

MEMORANDUM

#45572

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
FEB 13 27 PM '77

FRANKEL, D.J.

Plaintiff brings this action claiming violations of the federal securities laws and various obligations imposed by the common law. Specifically, she alleges that the defendant induced her husband to enter an ill-fated business relationship with Beck Industries, Inc., by fraudulently misrepresenting its financial condition. Defendant moves for summary judgment on the ground that the applicable statute of limitations has run on plaintiff's claim. The court, although not favored with a Rule 9(g) statement by plaintiff, has reviewed affidavits and other papers, and has determined that there are no material facts in dispute and that defendant's motion should be granted.

MICROFILM

FEB 1 1977

OPINION OF FRANKEL, D.J.

I.

Henry Daniels, husband of the plaintiff, was the sole shareholder and president of Hartogs, which was engaged in the design, manufacture, and sale of shirts to retail merchants. In late 1968, negotiations commenced between Mr. Daniels and representatives of Beck Industries over the possible exchange of Beck stock for that of Hartogs. During these negotiations, various Beck officers made representations to Daniels about Beck's financial condition and growth potential, and he was also provided with financial data and annual reports which had been prepared, at least in part, by Ernst and Ernst, Beck's accountants. On July 7, 1969, an agreement was executed between the parties providing inter alia that Daniels was to receive roughly \$4.2 million worth of Beck common stock in exchange for his Hartogs stock, and also that he was to be given a five-year employment contract by Beck. Mr. Daniels continued as President of Hartogs until his death in December 1973.

In the two years after the agreement was signed, the financial condition of Beck Industries deteriorated rapidly. In July 1970, Beck, after learning that a much needed public offering of debentures was to be postponed, asked the American Stock Exchange for a temporary suspension in the trading of its stock. Trading was halted on July 10, at which point the price of the stock was \$4.50 per share, a decline of \$38 from its high of \$42.50 a mere eighteen months before. These circumstances attracted the attention

OPINION OF FRANKEL, D.J.

of the national press, as did two lawsuits filed by Beck shareholders in September, 1970, and April, 1971, which alleged that the corporation had consistently misrepresented its financial status. In an effort to avoid complete financial collapse, Beck's officers took various steps, including meetings with creditors to obtain additional financing and to delay maturity of outstanding obligations, the sale of several subsidiaries to improve liquidity, and a reorganization of top management.

Still, the financial condition of the corporation worsened. In August, 1970, H. Lieber & Co. and The Peddlers, Inc., two Beck subsidiaries, filed petitions under Chapter XI of the Federal Bankruptcy Act. In October, 1970, Beck reported a net loss of \$651,000 from ordinary operations during the first six months of the fiscal year, and an extraordinary loss of \$19.7 million. By December, the net loss had risen to \$1.6 million, and there was an additional loss of \$5.6 million from discontinued operations. Finally, on May 27, 1971, Beck gave up its fight for financial survival and filed a petition for reorganization under Chapter X of the Federal Bankruptcy Act.

As a consequence of the various circumstances detailed above, the Beck stock received by Mr. Daniels in July, 1969, was by May, 1971, virtually worthless. The present action was brought on April 15, 1975, by his widow, on behalf of herself and his estate, to recoup what was lost

OPINION OF FRANKEL, D.J.

because of the allegedly fraudulent behavior of the defendant Ernst and Ernst.

II.

There is no dispute between the parties regarding the applicability of the California law of limitations to this action. The appropriate statutory provision is §338 of the California Code of Civil Procedure, which mandates a three year limitations period for:

- "1. An action upon a liability created by statute, other than a penalty or forfeiture."

* * *

- "4. An action for relief on the ground of fraud or mistake. The cause of action in such case not to be deemed to have accrued until the discovery, by the aggrieved party of the facts constituting the fraud or mistake."

See United California Bank v. Salik, 481 F.2d 1012 (9th Cir.), cert. denied, 414 U.S. 1004 (1973); Korn v. Merrill, 403 F. Supp. 377 (S.D.N.Y. 1975), aff'd, 538 F. 2d 310 (2d Cir. 1976).

While state law supplies the appropriate limitations period, it is a federal question when the statutory period begins to run. See, e.g., Korn v. Merrill, supra. In this Circuit, the limitations period is held to commence on "the date of the discovery of the fraud or [on] the date the fraud should upon reasonable inquiry have been discovered." Korn v. Merrill, supra at 387. See Berry Petroleum Company v. Adams & Peck, 518 F.2d 402 (2d Cir. 1975). The statutory

OPINION OF FRANKEL, D.J.

period " . . . [does] not await [plaintiff's] leisurely discovery of the full details of the alleged scheme." Klein v. Bower, 421 F.2d 338, 343 (2d Cir. 1970).

Applying the foregoing undisputed principles to the undisputed facts, the court concludes that the three-year statute of limitations commenced running on plaintiff's claim no later than May, 1971, and thus that this suit, filed in April, 1975, is time barred.

As recounted above, in the two-year period following Mr. Daniel's sale of his business, Beck Industries experienced serious financial difficulties. The price of its stock declined by approximately 90%, its ability to attract capital was seriously eroded, trading in its stock was suspended on the American Exchange, and several of its subsidiaries were forced into bankruptcy. Finally, on May 27, 1971, Beck Industries itself declared bankruptcy.

Plaintiff admits that these circumstances were known or readily knowable to her and her husband in 1970 and 1971. In fact, she acknowledges that upon hearing of the suspension of trading in Beck's stock, Mr. Daniels informed her that he had been "taken" in his dealings with Beck and that its financial condition had been misrepresented in the various reports and statements provided to him in 1968 and 1969. Similar discussions took place between Mr. and Mrs. Daniels at the time of Beck's bankruptcy in May, 1971. Thus, it is not disputed that by mid-1971, the plaintiff and her husband were fully apprised

OPINION OF FRANKEL, D.J.

of the financial demise of Beck Industries, and Mr. Daniels actually believed that the information provided him about Beck's financial health had been inaccurate and misleading.

Plaintiff's sole response to this array of evidence is that the facts available to her and her husband about Beck's possibly fraudulent behavior did not put them on notice that Ernst and Ernst, the corporation's accountants, were also involved in the fraudulent scheme. That knowledge, according to Mrs. Daniels, came to her only after her husband's death in late 1973 when she learned "about a law suit that charged the accounting firm, Ernst and Ernst, with playing a wrongful role in this situation."

This contention cannot avail to surmount the limitations defense. Learning of another lawsuit is not such belated knowledge of operative facts as might justify the tardiness. Indeed, plaintiff's papers are searched in vain for any material information she even claims to have acquired within the limitations period that was not known (or patently available) to her and/or her husband before then. Apart from learning of the lawsuit brought against Ernst and Ernst, Mrs. Daniels does not contend that she became aware of any specific information about the role of the accountants in the 1969 negotiations which she or her husband did not possess several years earlier. Nor is there any evidence to support the boilerplate allegation in the complaint that Ernst and Ernst had concealed its fraudulent conduct.

OPINION OF FRANKEL, D.J.

There are undoubtedly actual or readily imaginable cases in which notice of possibly fraudulent misrepresentations by a corporation would not reasonably trigger suspicions of complicity by its accountants. But this is no such case. Plaintiff admits that her husband received information about Beck's financial condition prepared by Ernst and Ernst during the course of the 1969 negotiations, and his reliance on that information forms the basis for the present action. She further acknowledges that by May, 1971, Mr. Daniels harbored strong suspicions about the accuracy of the financial statements and reports which he had been given. At that time, plaintiff and her husband may not have been aware of the details of Ernst and Ernst's allegedly fraudulent conduct, but, at the least, they had sufficient notice that further inquiry into Ernst and Ernst's role would be prudent. See Klein v. Bower, supra.

The court also does not find persuasive plaintiff's argument that she and her husband should not be held to have had constructive notice of the fraudulent scheme for purposes of the statute of limitations because they lacked business acumen and sophistication. Mr. Daniels invested in excess of \$4 million in Beck Industries, and he had on occasion holdings in excess of \$100,000 in the stock market. Further, during the course of his business career, Mr. Daniels frequently relied on the advice and assistance of accountants, and was thus no stranger to their role in a business enterprise.

OPINION OF FRANKEL, D.J.

In tending to their business affairs and investments, Mr. and Mrs. Daniels should be held to a standard of prudence commensurate with such business experience and the magnitude of their holdings. Surely a prudent investor with over \$4 million at risk would have acted more diligently in investigating possible fraudulent conduct of which he had ample notice than did either plaintiff or her husband here. Plaintiff is held to the standard of what prudent people in these circumstances would or should have known by a date more than three years prior to bringing this case. The suit fails by that standard.

Defendant's motion for summary judgment is granted. With regard to the pendent state law claims raised by plaintiff, defendant's contention that they too are barred by the California statute of limitations seems substantially correct. Nevertheless, since plaintiff's federal claims have been decided adversely at this preliminary stage in the litigation, the court finds it inappropriate to determine the status of the pendent claims. See United Mineworkers of America v. Gibbs, 383 U.S. 715 (1966). The complaint will be dismissed in its entirety.

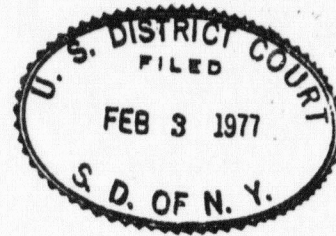
It is so ordered.

Dated, New York, New York

February 1, 1977

Martin E. Frankel
U.S.D.J.

349a
JUDGMENT.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
BRITTA DANIELS, as Trustee of the
Testamentary Trust under the Will
of HENRY DANIELS, deceased, and : 75 Civil 1829 (MEF)
BRITTA DANIELS individually :
Plaintiff : JUDGMENT
-against- :
ERNST & ERNST :
Defendant :
----- X

Defendant having moved the Court pursuant to Rule 56, of the Federal Rules of Civil Procedure, and the said motion having come on to be heard before the Honorable Marvin E. Frankel, United States District Judge, and the Court thereafter on February 1, 1977, having handed down its memorandum opinion granting the said motion for summary judgment, it is,

ORDERED, ADJUDGED and DECREED: That defendant ERNST & ERNST have judgment against plaintiff BRITTA DANIELS, as Trustee of the Testamentary Trust under the Will of HENRY DANIELS, deceased, and BRITTA DANIELS individually, dismissing the complaint in its entirety.

Dated: New York, N. Y.
February 3, 1977

Samuel F. Burghardt
Clerk

NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

BRITTA DANIELS as Trustee of the
Testamentary Will of HENRY DANIELS,
Deceased, and BRITTA DANIELS, indiv-
idually,

75 Civ. 1829 (MEF)

NOTICE OF APPEAL

Plaintiff,

-against-

ERNST & ERNST,

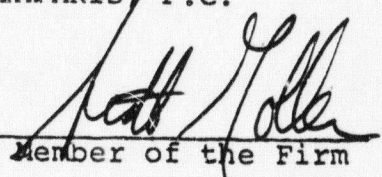
Defendant.

-----X

Notice is hereby given that BRITTA DANIELS as Trustee
of the Testamentary Will of HENRY DANIELS, Deceased, and
BRITTA DANIELS, individually, plaintiff above named hereby
appeals to the United States Court of Appeals for the Second
Circuit, from the final judgment dismissing the complaint
in its entirety entered in this action on the 3rd day of February,
1977.

Dated: New York, New York
February 11, 1977

LIPSIG, SULLIVAN, MOLLEN &
LIAPAKIS, P.C.

By: 
A Member of the Firm

TO: DAVIS, POLK & WARDWELL, ESQS.
Attorneys for ERNST & ERNST
One Chase Manhattan Plaza
New York, New York 10005

Attorneys for Plaintiff
Office & P.O. Address
100 Church Street
New York, New York 10007
(212) 732-9000

Service of ^{two}~~three~~ copies of
the within is
hereby admitted this day
of , 197

Attorney for

